

By: Senator(s) Fillingane, Bryan

To: Judiciary, Division A

SENATE BILL NO. 2727

1 AN ACT TO AMEND SECTION 97-45-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS CONCERNING COMPUTER CRIMES AND IDENTITY THEFT;
3 TO CREATE NEW SECTION 97-45-35, MISSISSIPPI CODE OF 1972, TO
4 PROHIBIT DISCLOSURE OF INFORMATION BY ELECTRONIC COMMUNICATION
5 SERVICE PROVIDERS CONCERNING CERTAIN SUBPOENAS AND SEARCH WARRANTS
6 ISSUED IN THE COURSE OF INVESTIGATIONS OF A NUMBER OF
7 INTERNET-BASED CRIMES AGAINST CHILDREN EXCEPT UNDER LIMITED
8 CIRCUMSTANCES; TO APPLY THE NONDISCLOSURE REQUIREMENTS TO OTHERS
9 TO WHOM DISCLOSURE IS MADE; AND FOR RELATED PURPOSES.

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

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

13 97-45-1. For the purposes of this chapter, the following
14 words shall have the meanings ascribed herein unless the context
15 clearly requires otherwise:

16 (a) "Access" means to program, to execute programs on,
17 to communicate with, store data in, retrieve data from or
18 otherwise make use of any resources, including data or programs,
19 of a computer, computer system or computer network.

20 (b) "Computer" includes an electronic, magnetic,
21 optical or other high-speed data processing device or system



22 performing logical arithmetic and storage functions and includes
23 any property, data storage facility or communications facility
24 directly related to or operating in conjunction with such device
25 or system. "Computer" shall not include an automated typewriter
26 or typesetter, a machine designed solely for word processing which
27 contains no database intelligence or a portable hand-held
28 calculator nor shall "computer" include any other device which
29 contains components similar to those in computers but in which the
30 components have the sole function of controlling the device for
31 the single purpose for which the device is intended unless the
32 thus controlled device is a processor of data or is a storage of
33 intelligence in which case it too is included.

34 (c) "Computer network" means a set of related, remotely
35 connected devices and communication facilities including at least
36 one (1) computer system with the capability to transmit data
37 through communication facilities.

38 (d) "Computer program" means an ordered set of data
39 representing coded instructions or statements that when executed
40 by a computer cause the computer to process data.

41 (e) "Computer software" means a set of computer
42 programs, procedures and associated documentation concerned with
43 operation of a computer system.

44 (f) "Computer system" means a set of functionally
45 related, connected or unconnected, computer equipment, devices or
46 computer software.



(g) "Computer services" means providing access to or service or data from a computer, a computer system or a computer network and includes the actual data processing.

(h) "Credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

(i) "Loss or damage" includes any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred or other consequential damages incurred because of interruption of service.

(j) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic or other impulses.

(k) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(l) "Electronic communication service provider" means a person or entity providing any electronic communication service, including, but not limited to: (i) a person or entity owning or



operating a remote computing service or a cable television,
satellite, Internet-based, telephone, wireless, microwave, fiber
optic, data transmission or radio distribution network, system or
facility; (ii) a person or entity that for a fee supplies
equipment or services to an electronic communication service
provider; and (iii) a person or entity providing an electronic
communication service directly or indirectly using any of the
systems, networks or facilities described in subparagraph (i).

(* * *m) "Electronic mail" means the transmission of
information or communication by the use of the Internet, a
computer, a facsimile machine, a pager, a cellular telephone, a
video recorder or other electronic means sent to a person
identified by a unique address or address number and received by
that person.

(* * *n) "Emotional distress" means significant mental
suffering or distress that may, but does not necessarily, require
medical or other professional treatment or counseling.

(* * *o) "Financial instrument" means any check,
draft, money order, certificate of deposit, letter of credit, bill
of exchange, credit card as defined in Section 97-19-9(b),
Mississippi Code of 1972, or marketable security.

(* * *p) "Financial transaction device" means any of
the following:

(i) An electronic funds transfer card.

(ii) A credit card.



97 (iii) A debit card.
98 (iv) A point-of-sale card.
99 (v) Any instrument, device, card, plate, code,
100 account number, personal identification number, or a record or
101 copy of a code, account number, or personal identification number
102 or other means of access to a credit account or deposit account,
103 or a driver's license or state identification card used to access
104 a proprietary account, other than access originated solely by a
105 paper instrument, that can be used alone or in conjunction with
106 another access device, for any of the following purposes.

107 1. Obtaining money, cash refund or credit
108 account credit, goods, services or any other thing of value.

109 2. Certifying or guaranteeing to a person or
110 business the availability to the device holder of funds on deposit
111 to honor a draft or check payable to the order of that person or
112 business.

113 3. Providing the device holder access to a
114 deposit account for the purpose of making deposits, withdrawing
115 funds, transferring funds between deposit accounts, obtaining
116 information pertaining to a deposit account or making an
117 electronic funds transfer.

118 (* * *g) "Intellectual property" includes data,
119 computer programs, computer software, trade secrets, copyrighted
120 materials and confidential or proprietary information in any form
121 or medium when such is stored in, produced by or intended for use



or storage with or in a computer, a computer system or a computer network.

(* * *r) "Internet" means that term as defined in Section 230 of Title II of the Communications Act of 1934, Chapter 652, 110 Stat. 137, 47 USCS 230.

(* * *s) "Medical records" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(* * *t) "Personal identity information" means any of the following information of another person:

- (i) A social security number.
- (ii) A driver's license number or state personal identification card number.
- (iii) Employment information.
- (iv) Information regarding any financial account held by another person including, but not limited to, any of the following:

1. A savings or checking account number.
2. A financial transaction device account number.
3. A stock or other security certificate or account number.
4. A personal information number for an account described in items 1 through 4.



147 (* * *u) "Post a message" means transferring, sending,
148 posting, publishing, disseminating, or otherwise communicating or
149 attempting to transfer, send, post, publish, disseminate or
150 otherwise communicate information, whether truthful or untruthful,
151 about the victim.

152 (* * *y) "Property" means property as defined in
153 Section 1-3-45, Mississippi Code of 1972, and shall specifically
154 include, but not be limited to, financial instruments,
155 electronically stored or produced data and computer programs,
156 whether in machine readable or human readable form.

157 (* * *w) "Proper means" includes:

158 (i) Discovery by independent invention;

159 (ii) Discovery by "reverse engineering"; that is,
160 by starting with the known product and working backward to find
161 the method by which it was developed. The acquisition of the
162 known product must be by lawful means;

163 (iii) Discovery under license or authority of the
164 owner;

165 (iv) Observation of the property in public use or
166 on public display; or

167 (v) Discovery in published literature.

168 (* * *x) "Unconsented contact" means any contact with
169 another individual that is initiated or continued without that
170 individual's consent or in disregard of that individual's



171 expressed desire that the contact be avoided or discontinued.

172 Unconsented contact includes any of the following:

173 (i) Following or appearing within sight of the
174 victim.

175 (ii) Approaching or confronting the victim in a
176 public place or on private property.

177 (iii) Appearing at the victim's workplace or
178 residence.

179 (iv) Entering onto or remaining on property owned,
180 leased or occupied by the victim.

181 (v) Contacting the victim by telephone.

182 (vi) Sending mail or electronic communications to
183 the victim through the use of any medium, including the Internet
184 or a computer, computer program, computer system or computer
185 network.

186 (vii) Placing an object on, or delivering or
187 having delivered an object to, property owned, leased or occupied
188 by the victim.

189 (* * *y) "Use" means to make use of, to convert to
190 one's service, to avail oneself of or to employ. In the context
191 of this act, "use" includes to instruct, communicate with, store
192 data in or retrieve data from, or otherwise utilize the logical
193 arithmetic or memory functions of a computer.



(* * *z) "Victim" means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

SECTION 2. The following shall be codified as Section 97-45-35, Mississippi Code of 1972:

97-45-35. (1) This section is limited to a subpoena or search warrant issued in the course of an investigation of an alleged internet-based.

(2) For the purposes of this section, Internet-based crimes include, but are not limited to:

(a) "Sexual abuse of a child" which means a criminal offense against a child based on any conduct described in:

(i) Section 43-47-18 relating to sexual abuse of a vulnerable person;

(ii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(iii) Section 97-3-65 relating to rape;

(iv) Section 97-3-71 relating to rape and assault with intent to ravish;

(v) Section 97-3-95 relating to sexual battery;

(vi) Section 97-5-5 relating to enticing a child under fourteen (14);

(vii) Section 97-5-7 relating to enticing a child under eighteen (18);



(viii) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(ix) Section 97-5-27 relating to the dissemination of sexual material to children or computer luring;

(x) Section 97-5-33 relating to exploitation of children;

(xi) Section 97-5-39(2) relating to felony child abuse;

(xii) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(xiii) Section 97-29-51 relating to procuring and promoting prostitution of a minor;

(xiv) Section 97-1-7 relating to the attempt to commit any of the offenses listed in this subsection;

(b) Section 97-19-39 relating to obtaining a signature or thing of value with intent to defraud; and

(c) Section 97-19-83 relating to fraud by mail or other means of communication.

(3) For the purposes of this section:

(a) "Supervisory official" means the person in charge of the law enforcement agency investigating an alleged offense covered under this section; the district attorney of the circuit from which the subpoena has been issued; or the Attorney General.



(b) "Adverse result" means:

- (i) Endangering the life or physical safety of an individual;
- (ii) Flight from prosecution;
- (iii) Destruction of or tampering with evidence;
- (iv) Intimidation of potential witnesses; or
- (v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(4) An electronic communications service provider in receipt of a criminal subpoena or search warrant is prohibited from disclosing to any person the existence of the subpoena or search warrant for ninety (90) days if the subpoena or search warrant is accompanied by the written certification of a supervisory official that there is reason to believe that knowledge by others of the existence of the subpoena or search warrant could have an adverse result.

(a) An electronic communications service provider that receives a subpoena or search warrant accompanied by the required written certification is authorized to disclose information otherwise subject to the nondisclosure requirements of this section only to the persons necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or search warrant or



the supervisory official who issued the written certification. The recipient must notify any person to whom disclosure of the subpoena or search warrant is made under this paragraph (a) of the existence of, and length of time associated with, the nondisclosure requirement.

(b) A person to whom disclosure of the subpoena or search warrant is made under paragraph (a) is subject to the nondisclosure requirements of this subsection (4) in the same manner as the recipient.

(c) If requested by the investigative or law enforcement officer who obtained the subpoena or search warrant or the supervisory official who issued the written certification, the subpoena recipient must identify the name of any person to whom disclosure was made under paragraph (a) on or before compliance with the subpoena or search warrant. If the investigative or law enforcement officer or supervisory official makes such a request, the recipient has an ongoing duty throughout the nondisclosure period to disclose the identity of any individuals who were informed of the existence of the subpoena or search warrant.

(5) An investigative or law enforcement officer who obtains a subpoena or search warrant under this section may delay the required notification for a period not to exceed one hundred eighty (180) days if the supervisory official certifies in writing that there is reason to believe that notification of the existence



of the subpoena or search warrant could have an adverse result as described in subsection (3).

(6) If an electronic communication service provider refuses to comply with a subpoena or search warrant pertaining to an alleged Internet-based crime, the investigative or law enforcement officer who sought the subpoena or search warrant may petition a court of competent jurisdiction to compel compliance; appropriate jurisdiction includes any jurisdiction in which the electronic communications service provider purposefully or systematically provided service or had an electronic presence. The court also may address the matter as criminal contempt pursuant to the Mississippi Rules of Criminal Procedure.

(7) Any disclosure of the existence of the subpoena or search warrant except as authorized by this section may also be addressed as criminal contempt under the Mississippi Rules of Criminal Procedure.

(8) No cause of action shall lie in any court against an electronic communication service provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena or search warrant under this section.

(9) Upon the request of an investigative or law enforcement officer, an electronic communications service provider must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.



317 **SECTION 3.** This act shall take effect and be in force from
318 and after July 1, 2019.

