

By: Representative Bailey

To: Judiciary B

## HOUSE BILL NO. 213

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

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

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

14 97-45-1. For the purposes of this chapter, the  
15 following \* \* \* terms shall have the meanings \* \* \* as defined in  
16 this section unless the context clearly requires otherwise:

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

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



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

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

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

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

45 (f) "Computer system" means a set of functionally  
46 related, connected or unconnected, computer equipment, devices or  
47 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



73 operating a remote computing service or a cable television,  
74 satellite, Internet-based, telephone, wireless, microwave, fiber  
75 optic, data transmission or radio distribution network, system or  
76 facility; (ii) a person or entity that for a fee supplies  
77 equipment or services to an electronic communication service  
78 provider; and (iii) a person or entity providing an electronic  
79 communication service directly or indirectly using any of the  
80 systems, networks or facilities described in subparagraph (i) of  
81 this paragraph (1).

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

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

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

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

97 (i) An electronic funds transfer card.



98                   (ii) A credit card.

99                   (iii) A debit card.

100                  (iv) A point-of-sale card.

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

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

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

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

120                  ( \* \* \*g) "Intellectual property" includes data,  
121 computer programs, computer software, trade secrets, copyrighted  
122 materials and confidential or proprietary information in any form



123 or medium when such is stored in, produced by or intended for use  
124 or storage with or in a computer, a computer system or a computer  
125 network.

126 ( \* \* \*r) "Internet" means that term as defined in  
127 Section 230 of Title II of the Communications Act of 1934, Chapter  
128 652, 110 Stat. 137, 47 USCS 230.

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

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

135 (i) A social security number.

136 (ii) A driver's license number or state personal  
137 identification card number.

138 (iii) Employment information.

139 (iv) Information regarding any financial account  
140 held by another person including, but not limited to, any of the  
141 following:

142 1. A savings or checking account number.

143 2. A financial transaction device account  
144 number.

145 3. A stock or other security certificate or  
146 account number.



147 4. A personal information number for an  
148 account described in items 1 through 4.

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

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

159 ( \* \* \*w) "Proper means" includes:  
160 (i) Discovery by independent invention;  
161 (ii) Discovery by "reverse engineering"; that is,  
162 by starting with the known product and working backward to find  
163 the method by which it was developed. The acquisition of the  
164 known product must be by lawful means;  
165 (iii) Discovery under license or authority of the  
166 owner;  
167 (iv) Observation of the property in public use or  
168 on public display; or  
169 (v) Discovery in published literature.

170 ( \* \* \*x) "Unconsented contact" means any contact with  
171 another individual that is initiated or continued without that



individual's consent or in disregard of that individual's  
expressed desire that the contact be avoided or discontinued.

Unconsented contact includes any of the following:

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

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

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

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

(v) Contacting the victim by telephone.

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

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

( \* \* \*y) "Use" means to make use of, to convert to  
one's service, to avail oneself of or to employ. In the context  
of this act, "use" includes to instruct, communicate with, store  
data in or retrieve data from, or otherwise utilize the logical  
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 crime.

(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; or

(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.



245 (b) "Adverse result" means:

246 (i) Endangering the life or physical safety of an  
247 individual;

248 (ii) Flight from prosecution;

249 (iii) Destruction of or tampering with evidence;

250 (iv) Intimidation of potential witnesses; or

251 (v) Otherwise seriously jeopardizing an  
252 investigation or unduly delaying a trial.

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

261 (a) An electronic communications service provider that  
262 receives a subpoena or search warrant accompanied by the required  
263 written certification is authorized to disclose information  
264 otherwise subject to the nondisclosure requirements of this  
265 section only to the persons necessary to comply with the subpoena,  
266 to an attorney in order to obtain legal advice or assistance  
267 regarding compliance with the subpoena, or to any other person as  
268 allowed and specifically authorized by the investigative or law  
269 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) of this subsection 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) of this subsection 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) of this section.

(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 under 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.



320           **SECTION 3.** This act shall take effect and be in force from  
321 and after July 1, 2020.

