

By: Senator(s) Gollott, Cuevas, Hewes

To: Judiciary

SENATE BILL NO. 2462

1 AN ACT TO AMEND SECTION 97-5-27, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT DISSEMINATION OF INDECENT MATERIALS ONLINE TO CERTAIN
3 MINORS FOR THE SPECIFIC PURPOSE OF INDUCING THEM TO ENGAGE IN
4 SEXUAL ACTS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 97-5-27, Mississippi Code of 1972, is
7 amended as follows:

8 97-5-27. (1) Any person who intentionally and knowingly
9 disseminates sexually oriented material to any person under
10 eighteen (18) years of age shall be guilty of a misdemeanor and
11 upon conviction shall be fined for each offense not less than Five
12 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
13 (\$5,000.00) or be imprisoned for not more than one (1) year in the
14 county jail, or be punished by both such fine and imprisonment. A
15 person disseminates sexually oriented material within the meaning
16 of this section if he:

17 (a) Sells, delivers or provides, or offers or agrees to
18 sell, deliver or provide, any sexually oriented writing, picture,
19 record or other representation or embodiment that is sexually
20 oriented; or

21 (b) Presents or directs a sexually oriented play, dance
22 or other performance or participates directly in that portion
23 thereof which makes it sexually oriented; or

24 (c) Exhibits, presents, rents, sells, delivers or
25 provides, or offers or agrees to exhibit, present, rent or to
26 provide any sexually oriented still or motion picture, film,
27 filmstrip or projection slide, or sound recording, sound tape or

28 sound track or any matter or material of whatever form which is a
29 representation, embodiment, performance or publication that is
30 sexually oriented.

31 (2) For purposes of this section, any material is sexually
32 oriented if the material contains representations or descriptions,
33 actual or simulated, of masturbation, sodomy, excretory functions,
34 lewd exhibition of the genitals or female breasts, sadomasochistic
35 abuse (for the purpose of sexual stimulation or gratification),
36 homosexuality, lesbianism, bestiality, sexual intercourse, or
37 physical contact with a person's clothed or unclothed genitals,
38 pubic area, buttocks, or the breast or breasts of a female for the
39 purpose of sexual stimulation, gratification or perversion.

40 (3) A person is guilty of sexual luring when:

41 (a) Knowing the character and content of any
42 communication of sexually oriented material, he intentionally uses
43 any computer communication system allowing the input, output,
44 examination or transfer of computer data or computer programs from
45 one computer to another, to initiate or engage in such
46 communication with a person under the age of eighteen (18); and

47 (b) By means of such communication he importunes,
48 invites or induces a person under the age of eighteen (18) years
49 to engage in sexual intercourse, deviant sexual intercourse or
50 sexual contact with him, or to engage in a sexual performance,
51 obscene sexual performance or sexual conduct for his benefit.

52 (4) A person who engages in the conduct proscribed by
53 subsection (3) of this section is presumed to do so with knowledge
54 of the character and content of the material.

55 (5) In any prosecution for sexual luring, it shall be a
56 defense that:

57 (a) The defendant made a reasonable effort to ascertain
58 the true age of the minor and was unable to do so as a result of
59 actions taken by the minor; or

60 (b) The defendant has taken, in good faith, reasonable,
61 effective and appropriate actions under the circumstances to
62 restrict or prevent access by minors to the materials prohibited,
63 which may involve any appropriate measures to restrict minors from
64 access to such communications, including any method which is

65 feasible under available technology; or

66 (c) The defendant has restricted access to such
67 materials by requiring use of a verified credit card, debit
68 account, adult access code or adult personal identification
69 number; or

70 (d) The defendant has in good faith established a
71 mechanism such that the labeling, segregation or other mechanism
72 enables such material to be automatically blocked or screened by
73 software or other capabilities reasonably available to responsible
74 adults wishing to effect such blocking or screening and the
75 defendant has not otherwise solicited minors not subject to such
76 screening or blocking capabilities to access that material or to
77 circumvent any such screening or blocking.

78 (6) In any prosecution for sexual luring:

79 (a) No person shall be held to have violated subsection
80 (3) of this section solely for providing access or connection to
81 or from a facility, system, or network not under that person's
82 control, including transmission, downloading, intermediate
83 storage, access software or other related capabilities that are
84 incidental to providing such access or connection that do not
85 include the creation of the content of the communication.

86 (b) No employer shall be held liable for the actions of
87 an employee or agent unless the employee's or agent's conduct is
88 within the scope of his employment or agency and the employer,
89 having knowledge of such conduct, authorizes or ratifies such
90 conduct, or recklessly disregards such conduct.

91 (c) The limitations provided by this subsection (6)
92 shall not be applicable to a person who is a conspirator with an
93 entity actively involved in the creation or knowing distribution
94 of communications that violate such provisions, or who knowingly
95 advertises the availability of such communications, nor to a
96 person who provides access or connection to a facility, system or
97 network engaged in the violation of such provisions that is owned

98 or controlled by such person.

99 SECTION 2. This act shall take effect and be in force from
100 and after July 1, 1999.