

By: Representative Franks

To: Judiciary B

HOUSE BILL NO. 1140

1 AN ACT TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY THAT THE USE OF THE INTERNET TO EXPLOIT CHILDREN IS
 3 UNLAWFUL; TO PROVIDE THAT INTERNET SERVICE PROVIDERS SHALL NOT BE
 4 CRIMINALLY LIABLE FOR THE ACTIONS OF A CUSTOMER IF THE PROVIDER
 5 HAS NO KNOWLEDGE OF SUCH ACTIONS; TO AMEND SECTION 97-5-35,
 6 MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR THE EXPLOITATION
 7 OF CHILDREN; TO AMEND SECTIONS 97-19-11, 97-19-13, 97-19-21 AND
 8 97-19-31, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE USE OF
 9 TELECOMMUNICATION DEVICES AND THE INTERNET SHALL APPLY IN CREDIT
 10 CARD FRAUD SITUATIONS; TO REVISE PENALTIES; TO BRING FORWARD
 11 SECTION 13-3-57, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
 12 CONFORMING AMENDMENTS; AND FOR RELATED PURPOSES.

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

14 SECTION 1. Section 97-5-33, Mississippi Code of 1972, is
 15 amended as follows:

16 97-5-33. (1) No person shall, by any means including
 17 computer, cause or knowingly permit any child to engage in
 18 sexually explicit conduct or in the simulation of sexually
 19 explicit conduct for the purpose of producing any visual depiction
 20 of such conduct.

21 (2) No person shall photograph, draw, sketch, film, video
 22 tape or otherwise depict or record a child engaging in sexually
 23 explicit conduct or in the simulation of sexually explicit
 24 conduct.

25 (3) No person shall knowingly send, transport, transport
 26 through the Internet, any photograph, drawing, sketch, film, video
 27 tape or other visual depiction depicting a child engaging in
 28 sexually explicit conduct.

29 (4) No person shall receive with intent to distribute,
 30 distribute for sale, sell or attempt to sell in any manner any

31 photograph, drawing, sketch, film or video tape which depicts a
32 child engaging in sexually explicit conduct.

33 (5) No person shall possess any photograph, drawing, sketch,
34 film or video tape which depicts a child engaging in sexually
35 explicit conduct.

36 (6) An Internet service provider shall not be criminally
37 liable for violations of this section by a customer of such
38 provider if the provider has no knowledge of the criminal actions
39 of the customer.

40 SECTION 2. Section 97-5-35, Mississippi Code of 1972, is
41 amended as follows:

42 97-5-35. Any person who violates any provision of Section
43 97-5-33 shall be guilty of a felony and upon conviction shall pay
44 a fine of not less than Twenty-five Thousand Dollars (\$25,000.00)
45 nor more than One Hundred Thousand Dollars (\$100,000.00) and shall
46 be imprisoned for not less than five (5) years nor more than
47 twenty (20) years. Any person convicted of a second or subsequent
48 violation of Section 97-5-33 shall pay a fine of not less than
49 Seventy-five Thousand Dollars (\$75,000.00) and shall be imprisoned
50 not less than ten (10) years nor more than thirty (30) years.

51 SECTION 3. Section 97-19-11, Mississippi Code of 1972, is
52 amended as follows:

53 97-19-11. Any person who makes or causes to be made either
54 directly or indirectly any false statement in writing or through
55 telecommunication devices or computers with intent that it be
56 relied upon with respect to his identity or that of any other
57 person, firm or corporation, for the purpose of procuring the
58 issuance of a credit card is guilty of a misdemeanor.

59 SECTION 4. Section 97-19-13, Mississippi Code of 1972, is
60 amended as follows:

61 97-19-13. A person who takes a credit card from the person,
62 possession, custody or control of another by acts constituting
63 statutory larceny, common law larceny by trespassory taking,

64 common law larceny by trick, embezzlement, false pretense or
65 extortion, by the use of telecommunication devices or through the
66 Internet or by any other method known to the criminal law of this
67 state, without the cardholder's consent, or who, with knowledge
68 that a credit card has been so taken, receives the credit card
69 with intent to use it or to sell it or to transfer it to a person
70 other than the issuer or the cardholder or one authorized by him
71 to receive it is guilty of credit card theft.

72 A person other than the issuer who sells a credit card or a
73 person who buys a credit card from a person other than the issuer
74 violates Sections 97-19-5 to 97-19-29.

75 Any person other than the issuer or cardholder or members of
76 his immediate family who, during any consecutive twelve-month
77 period, receives two (2) or more credit cards not issued in his
78 name and which cards he has reason to know were taken or retained
79 under circumstances which constitute credit card theft under this
80 section or a violation of Section 97-19-11 is considered to be in
81 violation of Sections 97-19-5 to 97-19-29.

82 SECTION 5. Section 97-19-21, Mississippi Code of 1972, is
83 amended as follows:

84 97-19-21. (1) It is unlawful for any person, with intent to
85 defraud the cardholder, the issuer, a person or organization
86 providing money, goods, property, services or anything else of
87 value, or any other person, (a) to use a credit card or credit
88 card number obtained or retained in violation of Sections 97-19-5
89 to 97-19-29, or a credit card which he knows is forged, for the
90 purpose of obtaining money, goods, property, services or anything
91 else of value, or (b) to obtain money, goods, property, services
92 or anything else of value (i) by representing without the consent
93 of the cardholder that he is the holder of a specified card, or
94 (ii) by representing that he is the holder of a card when he has
95 reason to know that such card has not in fact been issued, or

96 (iii) by representing that he has been authorized to use the
97 credit card or credit card number.

98 (2) It is unlawful for any person, with intent to defraud
99 the cardholder or issuer of a credit card used in the operation of
100 an automatic unmanned cash dispensing machine, to use such card
101 for the purpose of obtaining money from such machine.

102 (3) Any person convicted for a violation of subsection (1)
103 or (2) of this section shall be punished as follows:

104 (a) For a first offense of violating subsection (1) or
105 (2) of this section, whenever the value of the money, goods,
106 property, services or other thing of value obtained or attempted
107 to be obtained is less than One Hundred Dollars (\$100.00), the
108 person committing the offense shall be punished by a fine not to
109 exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the
110 county jail for a term not to exceed one (1) year, or by both such
111 fine and imprisonment.

112 (b) For a second or subsequent offense of violating
113 subsection (1) or (2) of this section, whenever the value of the
114 money, goods, property, services or other thing of value obtained
115 or attempted to be obtained is less than One Hundred Dollars
116 (\$100.00), the person committing the offense shall be guilty of a
117 felony and, upon conviction, shall be punished by a fine of not
118 less than One Hundred Dollars (\$100.00) nor more than One Thousand
119 Dollars (\$1,000.00), or by imprisonment in the State Penitentiary
120 for a term not to exceed five (5) years, or by both such fine and
121 imprisonment.

122 (c) Whenever the value of the money, goods, property,
123 services or other thing of value obtained or attempted to be
124 obtained is One Hundred Dollars (\$100.00) or more, the person
125 committing the offense, whether the offense is a first, second or
126 subsequent offense, shall be guilty of a felony and such person,
127 upon conviction, shall be punished as provided in paragraph (3)(b)
128 of this section.

129 (4) For the purpose of determining the punishment to be
130 imposed under subsection (3) of this section, the value of all
131 money, goods, property, services and other things of value
132 obtained or attempted to be obtained by two (2) or more uses of
133 the same credit card shall be aggregated.

134 SECTION 6. Section 97-19-31, Mississippi Code of 1972, is
135 amended as follows:

136 97-19-31. (1) It shall be unlawful for any person knowingly
137 to obtain or attempt to obtain credit, or to purchase or attempt
138 to purchase any goods, property or service, by the use of any
139 false, fictitious, counterfeit or expired telephone number, credit
140 number or other credit device, or by the use of any telephone
141 number, credit number or other credit device of another without
142 the authority of the person to whom such number or device was
143 issued, or by the use of any telephone number, credit number,
144 Internet account number or other credit device in any case where
145 such number or device has been revoked and notice of revocation
146 has been given to the person to whom issued.

147 (2) It shall be unlawful for any person to use or to assist
148 another to use a credit number or other credit device in
149 connection with any fraudulent scheme, means or method with intent
150 to defraud the issuer of such credit number or other credit
151 device.

152 (3) It shall be unlawful for any person to obtain or attempt
153 to obtain by the use of any false or fraudulent scheme, device,
154 means or method, telephone or telegraph service or the
155 transmission of a message, signal or other communication by
156 telephone or telegraph, or over telephone or telegraph facilities.

157 (4) The word "notice" as used in subsection (1) of this
158 section shall be construed to include either notice given in
159 person or notice given in writing to the person to whom the number
160 or device was issued. The sending of a notice in writing
161 personally signed by the issuer or his duly authorized agent or

162 employee by registered or certified mail in the United States
163 mail, duly stamped and addressed to such person at his last
164 address known to the issuer, shall be prima facie evidence that
165 such notice was duly received.

166 (5) Any person who violates any provision of subsections
167 (1), (2) or (3) of this section is guilty of a misdemeanor and
168 upon conviction shall be punished by a fine of not less than Fifty
169 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or
170 imprisonment for not more than one (1) year, or by both such fine
171 and imprisonment.

172 SECTION 7. Section 13-3-57, Mississippi Code of 1972, is
173 brought forward as follows:

174 13-3-57. Any nonresident person, firm, general or limited
175 partnership, or any foreign or other corporation not qualified
176 under the Constitution and laws of this state as to doing business
177 herein, who shall make a contract with a resident of this state to
178 be performed in whole or in part by any party in this state, or
179 who shall commit a tort in whole or in part in this state against
180 a resident or nonresident of this state, or who shall do any
181 business or perform any character of work or service in this
182 state, shall by such act or acts be deemed to be doing business in
183 Mississippi and shall thereby be subjected to the jurisdiction of
184 the courts of this state. Service of summons and process upon the
185 defendant shall be had or made as is provided by the Mississippi
186 Rules of Civil Procedure.

187 Any such cause of action against any such nonresident, in the
188 event of death or inability to act for itself or himself, shall
189 survive against the executor, administrator, receiver, trustee, or
190 any other selected or appointed representative of such
191 nonresident. Service of process or summons may be had or made
192 upon such nonresident executor, administrator, receiver, trustee
193 or any other selected or appointed representative of such
194 nonresident as is provided by the Mississippi Rules of Civil

195 Procedure, and when such process or summons is served, made or had
196 against the nonresident executor, administrator, receiver, trustee
197 or other selected or appointed representative of such nonresident
198 it shall be deemed sufficient service of such summons or process
199 to give any court in this state in which such action may be filed,
200 in accordance with the provisions of the statutes of the State of
201 Mississippi or the Mississippi Rules of Civil Procedure,
202 jurisdiction over the cause of action and over such nonresident
203 executor, administrator, receiver, trustee or other selected or
204 appointed representative of such nonresident insofar as such cause
205 of action is involved.

206 The provisions of this section shall likewise apply to any
207 person who is a nonresident at the time any action or proceeding
208 is commenced against him even though said person was a resident at
209 the time any action or proceeding accrued against him.

210 SECTION 8. This act shall take effect and be in force from
211 and after July 1, 2001.