

By: Representative Franks

To: Judiciary B

COMMITTEE SUBSTITUTE  
FOR  
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 AMEND SECTION  
11 13-3-57, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS  
12 OF THIS ACT; 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 amended 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 is engaged in  
181 substantial and not isolated activity within the state, whether or  
182 not the claim arises from that activity, shall by such act or acts  
183 be deemed to be doing business in Mississippi and shall thereby be  
184 subjected to the jurisdiction of the courts of this state.

185 Service of summons and process upon the defendant shall be had or  
186 made as is provided by the Mississippi 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.