To: Judiciary B

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
By: Representative Franks
To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1140

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

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

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

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

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

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

(4) No person shall receive with intent to distribute,

H. B. No. 1140 *HR40/R1633CS* 01/HR40/R1633CS PAGE 1 (CJR\BD)
photograph, drawing, sketch, film or video tape which depicts a
child engaging in sexually explicit conduct.

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

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

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

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

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

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

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

97-19-13. A person who takes a credit card from the person,
possession, custody or control of another by acts constituting
statutory larceny, common law larceny by trespassory taking,
common law larceny by trick, embezzlement, false pretense or extortion, by the use of telecommunication devices or through the Internet or by any other method known to the criminal law of this state, without the cardholder's consent, or who, with knowledge that a credit card has been so taken, receives the credit card with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder or one authorized by him to receive it is guilty of credit card theft.

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

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

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

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

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

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

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

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

(c) Whenever the value of the money, goods, property, services or other thing of value obtained or attempted to be obtained is One Hundred Dollars ($100.00) or more, the person committing the offense, whether the offense is a first, second or subsequent offense, shall be guilty of a felony and such person, upon conviction, shall be punished as provided in paragraph (3)(b) of this section.
(4) For the purpose of determining the punishment to be imposed under subsection (3) of this section, the value of all money, goods, property, services and other things of value obtained or attempted to be obtained by two (2) or more uses of the same credit card shall be aggregated.

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

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

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

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

(4) The word "notice" as used in subsection (1) of this section shall be construed to include either notice given in person or notice given in writing to the person to whom the number or device was issued. The sending of a notice in writing personally signed by the issuer or his duly authorized agent or
employee by registered or certified mail in the United States
mail, duly stamped and addressed to such person at his last
address known to the issuer, shall be prima facie evidence that
such notice was duly received.

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

SECTION 7. Section 13-3-57, Mississippi Code of 1972, is
amended as follows:

13-3-57. Any nonresident person, firm, general or limited
partnership, or any foreign or other corporation not qualified
under the Constitution and laws of this state as to doing business
herein, who shall make a contract with a resident of this state to
be performed in whole or in part by any party in this state, or
who shall commit a tort in whole or in part in this state against
a resident or nonresident of this state, or who is engaged in
substantial and not isolated activity within the state, whether or
not the claim arises from that activity, shall by such act or acts
be deemed to be doing business in Mississippi and shall thereby be
subjected to the jurisdiction of the courts of this state.

Service of summons and process upon the defendant shall be had or
made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the
event of death or inability to act for itself or himself, shall
survive against the executor, administrator, receiver, trustee, or
any other selected or appointed representative of such
nonresident. Service of process or summons may be had or made
upon such nonresident executor, administrator, receiver, trustee
or any other selected or appointed representative of such
nonresident as is provided by the Mississippi Rules of Civil
Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summons or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

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

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