

By: Representatives Franks, Scott (80th)

To: Judiciary B

HOUSE BILL NO. 1552

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; AND FOR RELATED
 11 PURPOSES.

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

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

15 97-5-33. (1) No person shall, by any means including
 16 computer, cause or knowingly permit any child to engage in
 17 sexually explicit conduct or in the simulation of sexually
 18 explicit conduct for the purpose of producing any visual depiction
 19 of such conduct.

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

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

28 (4) No person shall receive with intent to distribute,
 29 distribute for sale, sell or attempt to sell in any manner any
 30 photograph, drawing, sketch, film or video tape which depicts a
 31 child engaging in sexually explicit conduct.



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

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

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

41 97-5-35. Any person who violates any provision of Section
42 97-5-33 shall be guilty of a felony and upon conviction shall pay
43 a fine of not less than Twenty-five Thousand Dollars (\$25,000.00)
44 nor more than One Hundred Thousand Dollars (\$100,000.00) and shall
45 be imprisoned for not less than five (5) years nor more than
46 twenty (20) years. Any person convicted of a second or subsequent
47 violation of Section 97-5-33 shall pay a fine of not less than
48 Seventy-five Thousand Dollars (\$75,000.00) and shall be imprisoned
49 not less than ten (10) years nor more than thirty (30) years.

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

52 97-19-11. Any person who makes or causes to be made either
53 directly or indirectly any false statement in writing or through
54 telecommunication devices or computers with intent that it be
55 relied upon with respect to his identity or that of any other
56 person, firm or corporation, for the purpose of procuring the
57 issuance of a credit card is guilty of a misdemeanor.

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

60 97-19-13. A person who takes a credit card from the person,
61 possession, custody or control of another by acts constituting
62 statutory larceny, common law larceny by trespassory taking,
63 common law larceny by trick, embezzlement, false pretense or
64 extortion, by the use of telecommunication devices or through the



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

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

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

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

83 97-19-21. (1) It is unlawful for any person, with intent to
84 defraud the cardholder, the issuer, a person or organization
85 providing money, goods, property, services or anything else of
86 value, or any other person, (a) to use a credit card or credit
87 card number obtained or retained in violation of Sections 97-19-5
88 to 97-19-29, or a credit card which he knows is forged, for the
89 purpose of obtaining money, goods, property, services or anything
90 else of value, or (b) to obtain money, goods, property, services
91 or anything else of value (i) by representing without the consent
92 of the cardholder that he is the holder of a specified card, or
93 (ii) by representing that he is the holder of a card when he has
94 reason to know that such card has not in fact been issued, or
95 (iii) by representing that he has been authorized to use the
96 credit card or credit card number.



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

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

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

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

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

128 (4) For the purpose of determining the punishment to be
129 imposed under subsection (3) of this section, the value of all



130 money, goods, property, services and other things of value
131 obtained or attempted to be obtained by two (2) or more uses of
132 the same credit card shall be aggregated.

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

135 97-19-31. (1) It shall be unlawful for any person knowingly
136 to obtain or attempt to obtain credit, or to purchase or attempt
137 to purchase any goods, property or service, by the use of any
138 false, fictitious, counterfeit or expired telephone number, credit
139 number or other credit device, or by the use of any telephone
140 number, credit number or other credit device of another without
141 the authority of the person to whom such number or device was
142 issued, or by the use of any telephone number, credit number,
143 Internet account number or other credit device in any case where
144 such number or device has been revoked and notice of revocation
145 has been given to the person to whom issued.

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

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

156 (4) The word "notice" as used in subsection (1) of this
157 section shall be construed to include either notice given in
158 person or notice given in writing to the person to whom the number
159 or device was issued. The sending of a notice in writing
160 personally signed by the issuer or his duly authorized agent or
161 employee by registered or certified mail in the United States
162 mail, duly stamped and addressed to such person at his last



163 address known to the issuer, shall be prima facie evidence that
164 such notice was duly received.

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

171 **SECTION 7.** This act shall take effect and be in force from
172 and after July 1, 2002.

