MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Representatives Franks, Scott (80th)
To: Judiciary B

HOUSE BILL NO. 1552

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; 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, distribute for sale, sell or attempt to sell in any manner any 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) nor 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. This act shall take effect and be in force from
and after July 1, 2002.