

By: Senator(s) Doty, Jackson (11th)

To: Judiciary, Division A

SENATE BILL NO. 2528
(As Passed the Senate)

1 AN ACT TO PROHIBIT UNLAWFUL DISCLOSURE OR PROMOTION OF
2 INTIMATE VISUAL MATERIAL; TO CREATE NEW SECTION 95-17-1,
3 MISSISSIPPI CODE OF 1972, TO PROVIDE DEFINITIONS; TO CREATE NEW
4 SECTION 95-17-3, MISSISSIPPI CODE OF 1972, TO PROVIDE LIABILITY
5 FOR UNLAWFUL DISCLOSURE OR PROMOTION OF CERTAIN VISUAL MATERIAL;
6 TO CREATE NEW SECTION 95-17-5, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE FOR DAMAGES; TO CREATE NEW SECTION 95-17-7, MISSISSIPPI
8 CODE OF 1972, TO PROVIDE FOR INJUNCTIVE RELIEF; TO CREATE NEW
9 SECTION 95-17-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
10 REMEDIES UNDER THIS ACT ARE CUMULATIVE TO OTHER LAW; TO CREATE NEW
11 SECTION 95-17-11, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
12 JURISDICTION; TO CREATE NEW SECTION 95-17-13, MISSISSIPPI CODE OF
13 1972, TO PROVIDE EXCEPTIONS; TO CREATE NEW SECTION 97-29-67,
14 MISSISSIPPI CODE OF 1972, TO CREATE THE CRIME OF UNLAWFUL
15 DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL, AND TO ENACT
16 DEFINITIONS AND PENALTIES; TO CREATE THE ACT OF "SEXTING" AS A
17 DELINQUENT ACT WITHIN THE ORIGINAL JURISDICTION OF THE YOUTH
18 COURT, TO CREATE CERTAIN EXCEPTIONS, AND TO CREATE DEFENSES; AND
19 FOR RELATED PURPOSES.

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

21 **SECTION 1.** The following shall be codified as Section
22 95-17-1, Mississippi Code of 1972:

23 95-17-1. In this chapter:

24 (a) "Intimate parts," "promote," "sexual conduct," and
25 "visual material" have the meanings given in Section 97-29-67.



(b) "Intimate visual material" means visual material that depicts a person:

(i) With the person's intimate parts exposed; or

(ii) Engaged in sexual conduct.

SECTION 2. The following shall be codified as Section 95-17-3, Mississippi Code of 1972:

95-17-3. (1) A defendant is liable to a person depicted in intimate visual material for damages arising from the disclosure of the material if:

(a) The defendant intentionally discloses the intimate visual material knowing, or recklessly disregarding, whether the depicted person had not given effective consent to the disclosure;

(b) The intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;

(c) The disclosure of the intimate visual material would cause harm to the depicted person; and

(d) The disclosure of the intimate visual material reveals the identity of the depicted person in any manner, including through:

(i) Any accompanying information or material related to the intimate visual material; or



(ii) Information or material provided by a third party in response to the disclosure of the intimate visual material.

(2) A defendant is liable to a person depicted in intimate visual material for damages arising from the promotion of the material if, knowing the character and content of the material, the defendant promotes intimate visual material described by subsection (1) of this section on an Internet website or other forum for publication that is owned or operated by the defendant.

SECTION 3. The following shall be codified as Section 95-17-5, Mississippi Code of 1972:

95-17-5. (1) A claimant who prevails in a suit under this chapter shall be awarded:

(a) Actual damages, including damages for mental anguish;

(b) Court costs; and

(c) Reasonable attorney's fees.

(2) In addition to an award under subsection (1) of this section, a claimant who prevails in a suit under this chapter may recover exemplary damages.

SECTION 4. The following shall be codified as Section 95-17-7, Mississippi Code of 1972:

95-17-7. (1) A court in which a suit is brought under this chapter, on the motion of a party, may issue a temporary restraining order or a temporary or permanent injunction to



74 restrain and prevent the disclosure or promotion of intimate
75 visual material with respect to the person depicted in the
76 material.

77 (2) A court that issues a temporary restraining order or a
78 temporary or permanent injunction under subsection (1) of this
79 section may award to the party who brought the motion damages in
80 the amount of:

81 (a) One Thousand Dollars (\$1,000.00) for each violation
82 of the court's order or injunction, if the disclosure or promotion
83 of intimate visual material is willful or intentional; or

84 (b) Five Hundred Dollars (\$500.00) for each violation
85 of the court's order or injunction, if the disclosure or promotion
86 of intimate visual material is not willful or intentional.

87 **SECTION 5.** The following shall be codified as Section
88 95-17-9, Mississippi Code of 1972:

89 95-17-9. The cause of action created by this chapter is
90 cumulative and in addition to any other remedy available at common
91 law or by statute.

92 **SECTION 6.** The following shall be codified as Section
93 95-17-11, Mississippi Code of 1972:

94 95-17-11. A court has personal jurisdiction over a defendant
95 in a suit brought under this chapter if:

96 (a) The defendant resides in this state;

97 (b) The claimant who is depicted in the intimate visual
98 material resides in this state;



(c) The intimate visual material is stored on a server that is located in this state; or

(d) The intimate visual material is available for view in this state.

SECTION 7. The following shall be codified as Section 95-17-13, Mississippi Code of 1972:

95-17-13. (1) This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons from, and provide adequate remedies to victims of, the disclosure or promotion of intimate visual material.

(2) This chapter does not apply to a claim brought against an interactive computer service, as defined by 47 USC Section 230, for a disclosure or promotion consisting of intimate visual material provided by another person.

SECTION 8. The following shall be codified as Section 97-29-67, Mississippi Code of 1972:

97-29-67. (1) In this section:

(a) "Intimate parts" means the female nipple or areola or the male or female naked genitals, pubic area, anus or buttocks.

(b) "Promote" means to do, or offer or agree to do, any of the following: procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise.



(c) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation or sadomasochistic abuse.

(d) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the intimate parts.

(e) "Visual material" means:

(i) Any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative or slide; or

(ii) Any physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission or other method.

(2) A person commits an offense if:

(a) Without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;

(b) The visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;



(c) The disclosure of the visual material causes harm to the depicted person; and

(d) The disclosure of the visual material reveals the identity of the depicted person in any manner, including through:

(i) Any accompanying or subsequent information or material related to the visual material; or

(ii) Information or material provided by a third party in response to the disclosure of the visual material.

(3) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the person makes the threat to obtain a benefit:

(a) In return for not making the disclosure; or

(b) In connection with the threatened disclosure.

(4) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by subsection (2) of this section on an Internet website or other forum for publication that is owned or operated by the person.

(5) It is not a defense to prosecution under this section that the depicted person:

(a) Created or consented to the creation of the visual material; or



(b) Voluntarily transmitted the visual material to the defendant.

(6) It is an affirmative defense to prosecution under subsection (1) or (2) of this section that:

(a) The disclosure or promotion is made in the course of:

(i) Lawful and common practices of law enforcement or medical treatment;

(ii) Reporting unlawful activity; or

(iii) A legal proceeding, if the disclosure or promotion is permitted or required by law;

(b) The disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of:

(i) The person's intimate parts; or

(ii) The person engaging in sexual conduct; or

(iii) The actor is an interactive computer service, as defined by 47 USC Section 230, and the disclosure or promotion consists of visual material provided by another person.

(7) A person found guilty of a violation of this section shall be punished by a fine not to exceed Four Thousand Dollars (\$4,000.00), confinement in jail for a term not to exceed one (1) year, or both.



(8) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 9. Use of a computer or electronic communication device by a minor to possess, produce, transmit, disseminate, distribute or display an indecent visual image of a minor. (1)

For the purposes of this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly requires otherwise:

(a) "Computer" has the meaning given in Title 18, United States Code, Section 1030.

(b) "Disseminate" means to cause or make an electronic communication from one (1) person, place or electronic communication device to two (2) or more other persons, places or electronic communication devices.

(c) "Distribute" means to send, share, forward or deliver.

(d) "Electronic communication" means any transfer, including by computer, phone, or Internet of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(e) "Electronic communication device" means an electronic device, including, but not limited to, a wireless



219 telephone, personal digital assistant, or a portable or mobile
220 computer, that is capable of transmitting images or pictures.

221 (f) "Indecent visual image" means any image depicting
222 the sexually explicit conduct of an actual child under the age of
223 eighteen (18) years.

224 (g) "Minor" means any individual who has not attained
225 the age of eighteen (18) years.

226 (h) "Produce" with respect to visual material includes
227 any conduct that directly contributes to the creation or
228 manufacture of the material.

229 (i) "Sexually explicit conduct" means actual or
230 simulated:

231 (i) Oral genital contact, oral anal contact, or
232 sexual intercourse as defined in Section 97-3-65, whether between
233 persons of the same or opposite sex;

234 (ii) Bestiality;

235 (iii) Masturbation;

236 (iv) Sadistic or masochistic abuse;

237 (v) Lascivious exhibition of the female breast,
238 genitals, pubic area or buttocks;

239 (vi) Fondling or other erotic touching of the
240 genitals, pubic area, buttocks, anus or breast.

241 (j) "Simulated" means any depicting of the genitals or
242 rectal areas that gives the appearance of sexual conduct or
243 incipient sexual conduct.



(k) "Transmit" means to cause or make an electronic communication from one (1) person, place or electronic communication device to only one (1) other person, place or electronic communication device.

(l) "Visual image" means:

(i) Any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) Any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(2) (a) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic communication device to produce, transmit, disseminate, distribute or display an indecent visual image of the minor or another minor.

(b) No minor shall knowingly possess or receive an indecent visual image of another minor that has been produced, transmitted, disseminated, distributed or displayed through use of a computer or electronic communication device.

(3) A violation of this section is in the original jurisdiction of the youth court. Except as provided in subsection (6) of this section, acts prohibited by this section, if



prosecuted in a court with criminal jurisdiction, would constitute a misdemeanor.

(4) It is an affirmative defense to a violation charged under subsection (2)(a) of this section if the indecent visual image that has been produced depicts only the minor in possession and was not intentionally transmitted, disseminated, distributed or displayed to another person.

(5) It is an affirmative defense to a violation charged under subsection (2)(b) of this section if the minor who was in possession of the indecent visual image of another minor:

(a) Did not knowingly purchase, procure, solicit or request the indecent visual image or take any other action to cause the indecent visual image to come into his or her possession; and

(b) Upon receiving the indecent visual image, did not distribute, display or otherwise share the image with anyone other than a legal guardian, a law enforcement officer, school official or other adult in a position of trust or authority; and

(i) Took reasonable steps to destroy each image; or

(ii) Reported the matter to a legal guardian, law enforcement officer or school official and gave the legal guardian, law enforcement officer or school official access to each image.



293 (6) Acts prohibited by this section constitute a felony,
294 prosecutable in a court with criminal jurisdiction, and subject
295 the minor in violation to adjudication or, where applicable,
296 conviction under Section 97-5-33 or another applicable felony
297 statute within the Mississippi Code if any one (1) of the
298 following circumstances applies:

299 (a) The minor depicted in the indecent visual image is
300 three (3) or more years younger than the minor who committed any
301 act prohibited by this section.

302 (b) The minor who committed an act prohibited by this
303 section obtained or otherwise caused the indecent visual image to
304 be produced, transmitted, disseminated, distributed or displayed
305 through the use of force, extortion, blackmail, coercion, threats,
306 or intimidation.

307 (c) The minor has previously been adjudicated twice for
308 a violation of this section or has been previously adjudicated
309 delinquent under Section 97-5-33 of the Mississippi Code.

310 (7) A minor adjudicated delinquent under this section is not
311 required to register as a sex offender.

312 **SECTION 10.** This act shall take effect and be in force from
313 and after July 1, 2019.

