

**Adopted
AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2528

BY: Senator(s) Doty

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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.

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

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

29 (ii) Engaged in sexual conduct.



30 **SECTION 2.** The following shall be codified as Section
31 95-17-3, Mississippi Code of 1972:

32 95-17-3. (1) A defendant is liable to a person depicted in
33 intimate visual material for damages arising from the disclosure
34 of the material if:

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

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

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

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

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

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

52 (2) A defendant is liable to a person depicted in intimate
53 visual material for damages arising from the promotion of the
54 material if, knowing the character and content of the material,



55 the defendant promotes intimate visual material described by
56 subsection (1) of this section on an Internet website or other
57 forum for publication that is owned or operated by the defendant.

58 **SECTION 3.** The following shall be codified as Section
59 95-17-5, Mississippi Code of 1972:

60 95-17-5. (1) A claimant who prevails in a suit under this
61 chapter shall be awarded:

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

64 (b) Court costs; and

65 (c) Reasonable attorney's fees.

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

69 **SECTION 4.** The following shall be codified as Section
70 95-17-7, Mississippi Code of 1972:

71 95-17-7. (1) A court in which a suit is brought under this
72 chapter, on the motion of a party, may issue a temporary
73 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;

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

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



103 **SECTION 7.** The following shall be codified as Section
104 95-17-13, Mississippi Code of 1972:

105 95-17-13. (1) This chapter shall be liberally construed and
106 applied to promote its underlying purpose to protect persons from,
107 and provide adequate remedies to victims of, the disclosure or
108 promotion of intimate visual material.

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

113 **SECTION 8.** The following shall be codified as Section
114 97-29-67, Mississippi Code of 1972:

115 97-29-67. (1) In this section:

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

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

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

126 (d) "Simulated" means the explicit depiction of sexual
127 conduct that creates the appearance of actual sexual conduct and



128 during which a person engaging in the conduct exhibits any
129 uncovered portion of the intimate parts.

130 (e) "Visual material" means:

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

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

139 (2) A person commits an offense if:

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

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

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

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



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

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

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

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

162 (b) In connection with the threatened disclosure.

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

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

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

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

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



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

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

180 (ii) Reporting unlawful activity; or

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

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

186 (i) The person's intimate parts; or

187 (ii) The person engaging in sexual conduct; or

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

191 (7) A person found guilty of a violation of this section
192 shall be punished by a fine not to exceed Four Thousand Dollars
193 (\$4,000.00), confinement in jail for a term not to exceed one (1)
194 year, or both.

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

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



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

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

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

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

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

217 (e) "Electronic communication device" means an
218 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.

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

248 (l) "Visual image" means:

249 (i) Any film, photograph, videotape, negative, or
250 slide or any photographic reproduction that contains or



251 incorporates in any manner any film, photograph, videotape,
252 negative, or slide; or

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

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

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

266 (3) A violation of this section is in the original
267 jurisdiction of the youth court. Except as provided in subsection
268 (6) of this section, acts prohibited by this section, if
269 prosecuted in a court with criminal jurisdiction, would constitute
270 a misdemeanor.

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



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

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

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

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

289 (ii) Reported the matter to a legal guardian, law
290 enforcement officer or school official and gave the legal
291 guardian, law enforcement officer or school official access to
292 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.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

