

By: Representative Owen

To: Judiciary B

HOUSE BILL NO. 1222

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 DESCRIBE CERTAIN CRIME BY MINORS AS
17 DELINQUENT ACTS WITHIN THE ORIGINAL JURISDICTION OF THE YOUTH
18 COURT, TO CREATE CERTAIN EXCEPTIONS, AND TO CREATE DEFENSES; TO
19 AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
20 JURISDICTION OF THE YOUTH COURT FOR MINORS; TO AMEND SECTION
21 97-5-35, MISSISSIPPI CODE OF 1972, WHICH PROVIDE PENALTIES FOR
22 EXPLOITATION OF CHILDREN, TO CONFORM TO THE PRECEDING SECTION; AND
23 FOR RELATED PURPOSES.

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

25 **SECTION 1.** The following shall be codified as Section
26 95-17-1, Mississippi Code of 1972:

27 95-17-1. In this chapter:



(a) "Intimate parts," "promote," "sexual conduct" and "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



78 restrain and prevent the disclosure or promotion of intimate
79 visual material with respect to the person depicted in the
80 material.

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

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

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

91 **SECTION 5.** The following shall be codified as Section
92 95-17-9, Mississippi Code of 1972:

93 95-17-9. The cause of action created by this chapter is
94 cumulative and in addition to any other remedy available at common
95 law or by statute.

96 **SECTION 6.** The following shall be codified as Section
97 95-17-11, Mississippi Code of 1972:

98 95-17-11. A court has personal jurisdiction over a defendant
99 in a suit brought under this chapter if:

100 (a) The defendant resides in this state;

101 (b) The claimant who is depicted in the intimate visual
102 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 effectuate 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 victim, the person intentionally discloses visual material depicting the victim with the victim'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 victim had a reasonable expectation that the visual material would remain private;



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

(d) The disclosure of the visual material reveals the identity of the depicted victim 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 victim, visual material depicting the victim with the victim'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 victim:

(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 person 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 person 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



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

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

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

230 (h) "Produce" with respect to visual material includes
231 any conduct that directly contributes to the creation or
232 manufacture of the material.

233 (i) "Sexually explicit conduct" means actual or
234 simulated:

235 (i) Oral genital contact, oral anal contact or
236 sexual intercourse;

237 (ii) Bestiality;

238 (iii) Masturbation;

239 (iv) Sadistic or masochistic abuse;

240 (v) Lascivious exhibition of the female breast or
241 the genitals, pubic area, buttocks or anus;

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

244 (j) "Simulated" means any depicting of the genitals or
245 rectal areas that gives the appearance of sexual conduct or
246 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 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) 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.

(3) A violation of this section or Section 97-5-33 by a minor shall be in the original jurisdiction of the youth court.

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

SECTION 10. 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, solicit 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, by any means, including computer, photograph, 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, by any means, including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means, including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(5) No person shall, by any means, including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise,



coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) No person shall, by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

(10) If the person in violation of this section is a minor, only the penalties of Section 9 of House Bill No. , 2021 Regular Session shall be applicable. Any violation of this section by a minor shall be in the original jurisdiction of the youth court. The provisions of this paragraph shall not be construed to limit a minor from being prosecuted for violation under any other provision of law that is not described in this section.



SECTION 11. 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, except as otherwise provided in Section 9 of House Bill No. , 2021 Regular Session, shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$100,000.00) nor more than One Million Dollars (\$1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.

SECTION 12. This act shall take effect and be in force from and after July 1, 2021.

