AN ACT TO CRIMINALIZE THE DISCLOSURE WITHOUT CONSENT OF INTIMATE VISUAL MATERIAL; TO DEFINE TERMS; TO PROVIDE PENALTIES FOR THE CRIME; TO ENUMERATE CERTAIN DEFENSES; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in this section:

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

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

(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 genitals, buttocks or female nipple.
(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 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.

SECTION 2. (1) A person commits an offense if:

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

(b) At the time of the disclosure, the offender knows or has reason to believe that the visual material was obtained by the offender 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.

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

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

   (b) In connection with the threatened disclosure.

(3) A person commits an offense if, knowing the character and content of the visual material, the offender promotes 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 offender.

(4) 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 actor.

(5) It is an affirmative defense to prosecution under subsection (1) or (3) 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; or

(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.

(6) Where content is provided by another person or entity, nothing in this act shall be construed to impose criminal liability on the following:

(a) An internet service provider;

(b) An interactive computer service, as defined in 47 USC Section 230;

(c) A provider of an electronic communications service, as defined in 18 USC Section 2510;

(d) A telecommunications service, information service or mobile service, as defined in 47 USC Section 153, including a commercial mobile service, as defined in 47 USC Section 332(d); or

(e) A cable operator, as defined in 47 USC Section 522.
(7) (a) A first offense under this section is a misdemeanor and, upon conviction, shall be punished by imprisonment in the county jail not exceeding six (6) months or by a fine not exceeding One Thousand Dollars ($1,000.00), or both.

(b) A second or subsequent violation of this section is a felony and, upon conviction, shall be punished by imprisonment not exceeding one (1) year or by a fine not exceeding Two Thousand Dollars ($2,000.00), or both.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, any offense under this section committed for financial profit shall constitute a felony and, upon conviction, shall be punished by imprisonment not exceeding one (1) year or by fine not exceeding Two Thousand Dollars ($2,000.00), or both.

(8) A person shall be subject to prosecution in this state for any conduct made unlawful by this section which the person engages in while:

(a) Either within or outside of this state if, by such conduct, the person commits a violation of this section which involves an individual who resides in this state; or

(b) Within this state if, by such conduct, the person commits a violation of this section which involves an individual who resides within or outside this state.

(9) The provisions of this section are supplementary to the provisions of any other statute of this state. 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 3. This act shall take effect and be in force from and after July 1, 2021.