

By: Representatives Yancey, Eubanks

To: Judiciary B

HOUSE BILL NO. 1315

1 AN ACT TO REGULATE PORNOGRAPHIC MEDIA EXPOSURE TO CHILDREN;
 2 TO PROVIDE THE LEGISLATIVE INTENT; TO PROVIDE DEFINITIONS; TO
 3 REQUIRE COMMERCIAL ENTITIES THAT PROVIDE SUCH CONTENT TO HAVE AGE
 4 VERIFICATION SYSTEMS; TO PROVIDE LIABILITY FOR THOSE COMMERCIAL
 5 ENTITIES THAT DO NOT PROVIDE AN AGE VERIFICATION; TO BRING FORWARD
 6 SECTIONS 97-29-107 AND 97-29-109, MISSISSIPPI CODE OF 1972, WHICH
 7 PROVIDE THE EXEMPTIONS AND PENALTIES FOR DISTRIBUTION OF OBSCENE
 8 MATERIALS, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** The Legislature finds that pornography
 11 contributes to:

12 (a) The hyper sexualization of teens and prepubescent
 13 children and may lead to low self-esteem, body image disorders;

14 (b) An increase in problematic sexual activity at
 15 younger ages, and increased desire among adolescents to engage in
 16 risky sexual behavior;

17 (c) Difficulty in forming or maintaining positive,
 18 intimate relationships, as well as promoting problematic or
 19 harmful sexual behaviors and addiction; and



20 (d) A negative impact brain development and
21 functioning, contribute to emotional and medical illnesses, shape
22 deviant sexual arousal.

23 **SECTION 2.** The following words shall have the meanings
24 described herein:

25 (1) "Commercial entity" includes corporations, limited
26 liability companies, partnerships, limited partnerships, sole
27 proprietorships, or other legally recognized entities.

28 (2) "Distribute" means to issue, sell, give, provide,
29 deliver, transfer, transmute, circulate, or disseminate by any
30 means.

31 (3) "Internet" means the international computer network of
32 both federal and nonfederal interoperable packet switched data
33 networks.

34 (4) "Material harmful to minors" is defined as all of the
35 following:

36 (a) Any material that the average person, applying
37 contemporary community standards would find, taking the material
38 as a whole and with respect to minors, is designed to appeal to,
39 or is designed to pander to, the prurient interest.

40 (b) Any of the following material that exploits, is
41 devoted to, or principally consists of descriptions of actual,
42 simulated, or animated display or depiction of any of the
43 following, in a manner patently offensive with respect to minors:



44 (i) Pubic hair, anus, vulva, genitals, or nipple
45 of the female breast.

46 (ii) Touching, caressing, or fondling of nipples,
47 breasts, buttocks, anuses, or genitals.

48 (iii) Sexual intercourse, masturbation, sodomy,
49 bestiality, oral copulation, flagellation, excretory functions,
50 exhibitions, or any other sexual act.

51 (c) The material taken as a whole lacks serious
52 literary, artistic, political, or scientific value for minors.

53 (5) "Minor" means any person under the age of eighteen (18)
54 years.

55 (6) "News-gathering organization" means any of the
56 following:

57 (a) An employee of a newspaper, news publication, or
58 news source, printed or on an online or mobile platform, of
59 current news and public interest, while operating as an employee
60 as provided in this subparagraph, who can provide documentation of
61 such employment with the newspaper, news publication, or news
62 source.

63 (b) An employee of a radio broadcast station,
64 television broadcast station, cable television operator, or wire
65 service while operating as an employee as provided in this
66 subparagraph, who can provide documentation of such employment.



67 (7) "Publish" means to communicate or make information
68 available to another person or entity on a publicly available
69 Internet website.

70 (8) "Reasonable age verification methods" include verifying
71 that the person seeking to access the material is eighteen (18)
72 years of age or older by using any of the following methods:

73 (a) Provide a digitized identification card;

74 (b) Require the person attempting to access the
75 material to comply with a commercial age verification system that
76 verifies in one or more of the following ways:

77 (i) Government-issued identification; or

78 (ii) Any commercially reasonable method that
79 relies on public or private transactional data to verify the age
80 of the person attempting to access the information is at least
81 eighteen (18) years of age or older.

82 (9) "Substantial portion" means more than thirty-three and
83 one-third ($33\frac{1}{3}$) percent of total material on a website, which
84 meets the definition of "material harmful to minors" as defined by
85 this section.

86 (10) "Transactional data" means a sequence of information
87 that documents an exchange, agreement, or transfer between an
88 individual, commercial entity, or third party used for the purpose
89 of satisfying a request or event. Transactional data can include,
90 but is not limited to, records from mortgage, education, and
91 employment entities.



92 **SECTION 3.** (1) Any commercial entity that knowingly and
93 intentionally publishes or distributes material harmful to minors
94 on the Internet from a website that contains a substantial portion
95 of such material shall be held liable if the entity fails to
96 perform reasonable age verification methods to verify the age of
97 individuals attempting to access the material.

98 (2) Any commercial entity or third party that performs the
99 required age verification shall not retain any identifying
100 information of the individual after access has been granted to the
101 material.

102 (3) (a) Any commercial entity that is found to have
103 violated this section shall be liable to an individual for damages
104 resulting from a minor's accessing the material, including court
105 costs and reasonable attorney fees as ordered by the court.

106 (b) A commercial entity that is found to have knowingly
107 retained identifying information of the individual after access
108 has been granted to the individual shall be liable to the
109 individual for damages resulting from retaining the identifying
110 information, including court costs and reasonable attorney fees as
111 ordered by the court.

112 **SECTION 4.** (1) The provisions of this act shall not apply
113 to any bona fide news or public interest broadcast, website video,
114 report, or event and shall not be construed to affect the rights
115 of any news-gathering organizations.



116 (2) No Internet service provider, or its affiliates or
117 subsidiaries, search engine, or cloud service provider shall be
118 held to have violated the provisions of this act solely for
119 providing access or connection to or from a website or other
120 information or content on the Internet or a facility, system, or
121 network not under that provider's control including transmission,
122 downloading, intermediate storage, access software, or other to
123 the extent such provider is not responsible for the creation of
124 the content of the communication that constitutes material harmful
125 to minors.

126 **SECTION 5.** Section 97-29-107, Mississippi Code of 1972, is
127 brought forward as follows:

128 97-29-107. (1) Sections 97-29-101 through 97-29-109 shall
129 not apply when the distribution or wholesale distribution of the
130 material, performance or device was made by:

131 (a) A person, corporation, company, partnership, firm,
132 association, business, establishment or other legal entity to a
133 person associated with an institution of higher learning, either
134 as a member of the faculty or as a matriculated student, teaching
135 or pursuing a course of study related to such material,
136 performance or device;

137 (b) A licensed physician or a licensed psychologist to
138 a person whose receipt of such material or device was authorized
139 in writing by such physician or psychologist in the course of
140 medical or psychological treatment or care;



141 (c) A person who while acting in his capacity as an
142 employee is employed on a full-time or part-time basis by (i) any
143 recognized historical society or museum accorded charitable status
144 by the federal government; (ii) any state, county or municipal
145 public library; or (iii) any library of any public or private
146 school, college or university in this state; or

147 (d) A community television antenna services system or a
148 cable television system operating pursuant to a written agreement
149 not in conflict with this paragraph granted by a county,
150 municipality or other political subdivision of this state, or by
151 an employee of such system while acting within the scope of his
152 employment, when the signal transmitting the material or
153 performance originates outside of the State of Mississippi.

154 (2) Any exemption from prosecution claimed under the
155 provisions of this section may be raised at a pretrial hearing by
156 motion, and the court shall determine whether sufficient evidence
157 exists to constitute an exemption from prosecution under the
158 provisions of Sections 97-29-101 through 97-29-109. If the motion
159 is sustained, the case shall be dismissed; provided, however, if
160 the motion is not sustained then the defendant may offer into
161 evidence at trial as an affirmative defense to conviction under
162 Sections 97-29-101 through 97-29-109 any matter which could have
163 been raised by the defendant in the motion to dismiss.

164 **SECTION 6.** Section 97-29-109, Mississippi Code of 1972, is
165 brought forward as follows:



166 97-29-109. Any person, except one who wholesale distributes,
167 who violates Section 97-29-101 or Section 97-29-105 shall be
168 guilty of a misdemeanor and, upon conviction, shall, in the case
169 of the first offense, be fined not more than Five Thousand Dollars
170 (\$5,000.00) or imprisoned in the county jail for a term not to
171 exceed six (6) months, or both. If the person has been previously
172 convicted of a violation of Section 97-29-101 or Section 97-29-105
173 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then
174 the person shall be fined not less than Two Thousand Five Hundred
175 Dollars (\$2,500.00) nor more than Ten Thousand Dollars
176 (\$10,000.00) or imprisoned for a term not to exceed one (1) year,
177 or both.

178 Any person who wholesale distributes in violation of Section
179 97-29-101 or Section 97-29-105 shall, upon conviction, be fined
180 not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for
181 a term not to exceed one (1) year, or both. If the person has
182 been previously convicted of a violation of Section 97-29-101 or
183 Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi
184 Code of 1972, then the person shall, upon conviction, be fined not
185 less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more
186 than Fifty Thousand Dollars (\$50,000.00) or imprisoned for a term
187 not to exceed one (1) year, or both.

188 A corporation, company, partnership, firm, association,
189 business, establishment, organization or other legal entity other
190 than an individual convicted of distributing obscenity or unlawful



191 sexual devices or wholesale distribution of obscenity or unlawful
192 sexual devices shall be fined not less than One Thousand Dollars
193 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00). If
194 such legal entity has been previously convicted of distributing
195 obscenity or unlawful sexual devices or wholesale distribution of
196 obscenity or unlawful sexual devices or of a violation of Section
197 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such
198 legal entity shall be fined not less than Five Thousand Dollars
199 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

200 **SECTION 7.** This act shall take effect and be in force from
201 and after July 1, 2023.

