

REPORT OF CONFERENCE COMMITTEE

2

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1315: Pornographic media materials; regulate access to minors and require age verification.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

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

5 **SECTION 1.** The following shall be codified as Section
6 37-11-81, Mississippi Code of 1972:
7 37-11-81. (1) The state, or any of its agencies, a school
8 district, charter school, the Mississippi School of the Arts, the
9 Mississippi School for Mathematics and Science, the Mississippi
10 Virtual Public School, the Mississippi School for the Deaf or the
11 Mississippi School for the Blind (hereafter, "the contracting
12 party") may offer digital or online resources or databases to
13 students in kindergarten through twelfth grade only if the vendor
14 or other person or entity providing the resources verifies that
15 all the resources will comply with the provisions of subsection
16 (2) of this section.

17 (2) A vendor or other person or entity providing digital or
18 online resources or databases under the authority of this section
19 must have safety policies and technology protection measures that:

20 (a) Prohibit and prevent a person from sending,
21 receiving, viewing or downloading materials that are:

22 (i) Child pornography;

23 (ii) Materials that depict or promote child sexual
24 exploitation or trafficking;

25 (iii) Obscene materials, as defined in this act;

26 (iv) Inappropriate materials depicting or dealing
27 with matters of sex, cruelty and violence in a manner likely to be
28 injurious or harmful to a child; or

29 (v) Materials that are sexually oriented, as
30 defined in Section 97-5-27(2); and

31 (b) Block, or otherwise prohibit and prevent, access to
32 obscene materials, inappropriate materials, materials that are
33 sexually oriented or materials that depict, describe or promote
34 child pornography or child sexual exploitation.

35 (c) For the purposes of this act, material is obscene,
36 if:

37 (i) To the average person, applying contemporary
38 community standards, taken as a whole, it appeals to the prurient
39 interest, that is, a lustful, erotic, shameful, or morbid interest
40 in nudity, sex or excretion; and

41 (ii) The material taken as a whole lacks serious
42 literary, artistic, political or scientific value; and

43 (iii) The material depicts or describes in a
44 patently offensive way, sexual contact specifically defined in
45 items 1 through 5 below:

46 1. Acts of sexual intercourse of any kind,
47 normal or perverted, actual or simulated;

48 2. Acts of masturbation;

49 3. Acts involving excretory functions or lewd
50 exhibition of the genitals;

51 4. Acts of bestiality or the fondling of sex
52 organs of animals; or

53 5. Sexual acts of flagellation, torture or
54 other violence indicating a sadomasochistic sexual relationship.

55 (3) (a) The provisions of this section shall take
56 precedence over any other provision of law to the contrary in a
57 contract between the contracting party and a vendor or other
58 person or entity providing digital or online resources or
59 databases. Notwithstanding any other provision of law to the
60 contrary, in a contract between the contracting party and a
61 provider to the contrary, if a provider of digital or online
62 resources or databases fails to comply with the requirements of
63 this section, the contracting party shall withhold further
64 payments, if any, to the provider pending verification of
65 compliance.

66 (b) No Internet service provider, or its affiliates or
67 subsidiaries, search engine, or cloud service provider shall be
68 held to have violated the provisions of this act solely for
69 providing services that do not constitute the direct provision of
70 digital or online resources or databases to students in
71 kindergarten through twelfth grade.

72 (c) The provisions of this section do not apply to the
73 use of digital or online resources or databases by a student
74 enrolled in a Mississippi institution of higher education or a
75 Mississippi community or junior college, including dual-enrolled
76 students.

77 (d) Upon a first uncured occurrence by a provider of
78 digital or online resources or databases of noncompliance with
79 subsection (2) of this section and failure to verify within thirty
80 (30) days of receiving notice of the noncompliance from the
81 contracting party that the provider is in compliance with this
82 section, the contracting party shall consider the provider's
83 noncompliance to be a breach of contract.

84 (e) Upon a second uncured occurrence by a provider of
85 noncompliance with subsection (2) and failure to verify within
86 thirty (30) days of receiving notice of the noncompliance from the
87 contracting party that the provider is in compliance with the
88 requirements of this section, the contracting party is entitled to
89 a reduction in the amount of ten percent (10%) of the agreed upon
90 price in the contract to be paid by the contracting party to the

91 provider. The contracting party shall adjust any future payments
92 due to the provider under the contract accordingly to effectuate
93 the ten percent (10%) reduction. However, if the contract price
94 has been paid in full, or if the balance owed on the contract
95 price is equal to less than ten percent (10%) of the contract
96 price, the provider must return to the contracting party such
97 amount that is required to effectuate a ten percent (10%)
98 reduction of the contract price.

99 (f) Upon a third uncured occurrence by a provider of
100 noncompliance with subsection (2) and failure to verify within
101 thirty (30) days of receiving notice of the noncompliance from the
102 contracting party that the provider is in compliance with the
103 requirements of this section, the contract must be considered
104 terminated and the contracting party is entitled to a complete
105 refund of the agreed upon price in the contract to be paid by the
106 contracting party to the provider. The contracting party shall
107 withhold any future payments that may be due to the provider, and
108 the provider must return to the contracting party all amounts
109 previously paid to the provider under the contract.

110 (4) The Attorney General may investigate compliance with
111 this section. The contracting party must report to the Attorney
112 General a provider's failure to comply with subsection (2) of this
113 section no later than thirty (30) days after the contracting party
114 learns of the provider's noncompliance. Such a report shall

115 constitute a public record under the Mississippi Public Records
116 Act.

117 **SECTION 2.** The following shall be codified as Section
118 39-3-25, Mississippi Code of 1972:

119 39-3-25. (1) The state, or any of its agencies, or a public
120 library (hereafter, "the contracting party") may offer digital or
121 online resources or databases to minors only if the vendor or
122 other person or entity providing the resources verifies that all
123 the resources will comply with the provisions of subsection (2) of
124 this section. For purposes of this section, the term "minor"
125 means any person under the age of eighteen (18).

126 (2) A vendor or other person or entity providing digital or
127 online resources or databases under the authority of this section
128 must have safety policies and technology protection measures that:

129 (a) Prohibit and prevent a minor from sending,
130 receiving, viewing or downloading materials that are:

131 (i) Child pornography;

132 (ii) Materials that depict or promote child sexual
133 exploitation or trafficking;

134 (iii) Obscene materials, as defined in this act;

135 (iv) Inappropriate materials depicting or dealing
136 with matters of sex, cruelty and violence in a manner likely to be
137 injurious or harmful to a child; or

138 (v) Materials that are sexually oriented, as
139 defined in Section 97-5-27(2); and

140 (b) Block, or otherwise prohibit and prevent, a minor
141 from accessing obscene materials, inappropriate materials,
142 materials that are sexually oriented or materials that depict,
143 describe or promote child pornography or child sexual
144 exploitation.

145 (3) (a) The provisions of this section take precedence over
146 any provision in a contract between the contracting party and a
147 vendor or other person or entity providing digital or online
148 resources or databases to the contrary. Notwithstanding any
149 provision in a contract between the contracting party and a
150 provider to the contrary, if a provider of digital or online
151 resources or databases fails to comply with the requirements of
152 this section, the contracting party shall withhold further
153 payments, if any, to the provider pending verification of
154 compliance.

155 (b) No Internet service provider, or its affiliates or
156 subsidiaries, search engine, or cloud service provider shall be
157 held to have violated the provisions of this act solely for
158 providing services that do not constitute the direct provision of
159 digital or online resources or databases to minors.

160 (c) The provisions of this section do not apply to the
161 use of digital or online resources or databases by a student
162 enrolled in a Mississippi institution of higher education or a
163 Mississippi community or junior college, including dual-enrolled
164 students.

165 (d) Upon a first uncured occurrence by a provider of
166 digital or online resources or databases of noncompliance with
167 subsection (2) of this section and failure to verify within thirty
168 (30) days of receiving notice of the noncompliance from the
169 contracting party that the provider is in compliance with this
170 section, the contracting party shall consider the provider's
171 noncompliance to be a breach of contract.

172 (e) Upon a second uncured occurrence by a provider of
173 noncompliance with subsection (2) and failure to verify within
174 thirty (30) days of receiving notice of the noncompliance from the
175 contracting party that the provider is in compliance with the
176 requirements of this section, the contracting party is entitled to
177 a reduction in the amount of ten percent (10%) of the agreed upon
178 price in the contract to be paid by the contracting party to the
179 provider. The contracting party shall adjust any future payments
180 due to the provider under the contract accordingly to effectuate
181 the ten percent (10%) reduction. However, if the contract price
182 has been paid in full, or if the balance owed on the contract
183 price is equal to less than ten percent (10%) of the contract
184 price, the provider must return to the contracting party such
185 amount that is required to effectuate a ten percent (10%)
186 reduction of the contract price.

187 (f) Upon a third uncured occurrence by a provider of
188 noncompliance with subsection (2) and failure to verify within
189 thirty (30) days of receiving notice of the noncompliance from the

190 contracting party that the provider is in compliance with the
191 requirements of this section, the contract must be considered
192 terminated and the contracting party is entitled to a complete
193 refund of the agreed upon price in the contract to be paid by the
194 contracting party to the provider. The contracting party shall
195 withhold any future payments that may be due to the provider, and
196 the provider must return to the contracting party all amounts
197 previously paid to the provider under the contract.

198 (4) Prior to withholding any payment for noncompliance under
199 this act, any contracting party must provide to the database
200 vendor:

201 (i) Written notice of the nature of the violation,
202 including reasonable identification of the prohibited material and
203 the manner of its access.

204 (ii) Thirty (30) days to present evidence that the
205 acts alleged to constitute a violation are not a breach of the
206 provider's obligation.

207 (iii) Thirty (30) days to cure any occurrence of
208 noncompliance.

209 (iv) After having exhausted the administrative
210 remedies referenced in subparagraphs (i) - (iii), the opportunity
211 to tender the disputed contract funds into the registry of a court
212 of competent jurisdiction and to seek a judicial determination of
213 the rights under the contract.

214 (5) The Attorney General may investigate compliance with
215 this section. The contracting party must report to the Attorney
216 General a provider's failure to comply with subsection (2) of this
217 section no later than thirty (30) days after the contracting party
218 learns of the provider's noncompliance. Such a report shall
219 constitute a public record under the Mississippi Public Records
220 Act.

221 **SECTION 3.** If any section, paragraph, sentence, clause,
222 phrase or any part of this act passed on or after the effective
223 date of this act is declared to be unconstitutional or void, or if
224 for any reason is declared to be invalid or of no effect, the
225 remaining sections, paragraphs, sentences, clauses, phrases or
226 parts of this act shall be in no manner affected thereby but shall
227 remain in full force and effect.

228 Unless the contrary intent shall clearly appear in the
229 particular act in question, each and every act passed hereafter
230 shall be read and construed as though the provisions of the first
231 paragraph of this section form an integral part thereof, whether
232 expressly set out therein or not.

233 **SECTION 4.** This act shall take effect and be in force from
234 and after July 1, 2023.

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

1 AN ACT TO REGULATE PORNOGRAPHIC MEDIA EXPOSURE TO CHILDREN IN
2 K-12; TO REGULATE DIGITAL AND ONLINE RESOURCES PROVIDED BY K-12
3 VENDORS; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

X (SIGNED)
Bain

X (SIGNED)
Ford (73rd)

X (SIGNED)
Newman

CONFEREES FOR THE SENATE

X (SIGNED)
Fillingane

X (SIGNED)
Wiggins

X (SIGNED)
Hill