

House Amendments to Senate Bill No. 2346

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

27 **SECTION 1.** The Legislature finds that pornography
28 contributes to:

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

31 (b) An increase in problematic sexual activity at
32 younger ages, and increased desire among adolescents to engage in
33 risky sexual behavior;

34 (c) Difficulty in forming or maintaining positive,
35 intimate relationships, as well as promoting problematic or
36 harmful sexual behaviors and addiction; and

37 (d) A negative impact brain development and
38 functioning, contribute to emotional and medical illnesses, shape
39 deviant sexual arousal.

40 **SECTION 2.** The following words shall have the meanings
41 described herein:

42 (1) "Commercial entity" includes corporations, limited
43 liability companies, partnerships, limited partnerships, sole
44 proprietorships, or other legally recognized entities.

45 (2) "Distribute" means to issue, sell, give, provide,
46 deliver, transfer, transmute, circulate, or disseminate by any
47 means.

48 (3) "Internet" means the international computer network of
49 both federal and nonfederal interoperable packet switched data
50 networks.

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

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

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

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

63 (ii) Touching, caressing, or fondling of nipples,
64 breasts, buttocks, anuses, or genitals.

65 (iii) Sexual intercourse, masturbation, sodomy,
66 bestiality, oral copulation, flagellation, excretory functions,
67 exhibitions, or any other sexual act.

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

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

72 (6) "News-gathering organization" means any of the
73 following:

74 (a) An employee of a newspaper, news publication, or
75 news source, printed or on an online or mobile platform, of
76 current news and public interest, while operating as an employee
77 as provided in this subparagraph, who can provide documentation of
78 such employment with the newspaper, news publication, or news
79 source.

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

84 (7) "Publish" means to communicate or make information
85 available to another person or entity on a publicly available
86 Internet website.

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

90 (a) Provide a digitized identification card;

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

94 (i) Government-issued identification; or
95 (ii) Any commercially reasonable method that
96 relies on public or private transactional data to verify the age
97 of the person attempting to access the information is at least
98 eighteen (18) years of age or older.

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

103 (10) "Transactional data" means a sequence of information
104 that documents an exchange, agreement, or transfer between an
105 individual, commercial entity, or third party used for the purpose
106 of satisfying a request or event. Transactional data can include,
107 but is not limited to, records from mortgage, education, and
108 employment entities.

109 **SECTION 3.** (1) Any commercial entity that knowingly and
110 intentionally publishes or distributes material harmful to minors
111 on the Internet from a website that contains a substantial portion
112 of such material shall be held liable if the entity fails to
113 perform reasonable age verification methods to verify the age of
114 individuals attempting to access the material.

115 (2) Any commercial entity or third party that performs the
116 required age verification shall not retain any identifying
117 information of the individual after access has been granted to the
118 material.

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

123 (b) A commercial entity that is found to have knowingly
124 retained identifying information of the individual after access
125 has been granted to the individual shall be liable to the
126 individual for damages resulting from retaining the identifying
127 information, including court costs and reasonable attorney fees as
128 ordered by the court.

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

133 (2) No Internet service provider, or its affiliates or
134 subsidiaries, search engine, or cloud service provider shall be
135 held to have violated the provisions of this act solely for
136 providing access or connection to or from a website or other
137 information or content on the Internet or a facility, system, or
138 network not under that provider's control including transmission,
139 downloading, intermediate storage, access software, or other to
140 the extent such provider is not responsible for the creation of
141 the content of the communication that constitutes material harmful
142 to minors.

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

145 97-29-107. (1) Sections 97-29-101 through 97-29-109 shall
146 not apply when the distribution or wholesale distribution of the
147 material, performance or device was made by:

148 (a) A person, corporation, company, partnership, firm,
149 association, business, establishment or other legal entity to a
150 person associated with an institution of higher learning, either
151 as a member of the faculty or as a matriculated student, teaching
152 or pursuing a course of study related to such material,
153 performance or device;

154 (b) A licensed physician or a licensed psychologist to
155 a person whose receipt of such material or device was authorized
156 in writing by such physician or psychologist in the course of
157 medical or psychological treatment or care;

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

164 (d) A community television antenna services system or a
165 cable television system operating pursuant to a written agreement
166 not in conflict with this paragraph granted by a county,
167 municipality or other political subdivision of this state, or by
168 an employee of such system while acting within the scope of his
169 employment, when the signal transmitting the material or
170 performance originates outside of the State of Mississippi.

171 (2) Any exemption from prosecution claimed under the
172 provisions of this section may be raised at a pretrial hearing by
173 motion, and the court shall determine whether sufficient evidence
174 exists to constitute an exemption from prosecution under the
175 provisions of Sections 97-29-101 through 97-29-109. If the motion
176 is sustained, the case shall be dismissed; provided, however, if
177 the motion is not sustained then the defendant may offer into
178 evidence at trial as an affirmative defense to conviction under
179 Sections 97-29-101 through 97-29-109 any matter which could have
180 been raised by the defendant in the motion to dismiss.

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

183 97-29-109. Any person, except one who wholesale distributes,
184 who violates Section 97-29-101 or Section 97-29-105 shall be
185 guilty of a misdemeanor and, upon conviction, shall, in the case
186 of the first offense, be fined not more than Five Thousand Dollars
187 (\$5,000.00) or imprisoned in the county jail for a term not to
188 exceed six (6) months, or both. If the person has been previously
189 convicted of a violation of Section 97-29-101 or Section 97-29-105
190 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then
191 the person shall be fined not less than Two Thousand Five Hundred
192 Dollars (\$2,500.00) nor more than Ten Thousand Dollars
193 (\$10,000.00) or imprisoned for a term not to exceed one (1) year,
194 or both.

195 Any person who wholesale distributes in violation of Section
196 97-29-101 or Section 97-29-105 shall, upon conviction, be fined

197 not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for
198 a term not to exceed one (1) year, or both. If the person has
199 been previously convicted of a violation of Section 97-29-101 or
200 Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi
201 Code of 1972, then the person shall, upon conviction, be fined not
202 less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more
203 than Fifty Thousand Dollars (\$50,000.00) or imprisoned for a term
204 not to exceed one (1) year, or both.

205 A corporation, company, partnership, firm, association,
206 business, establishment, organization or other legal entity other
207 than an individual convicted of distributing obscenity or unlawful
208 sexual devices or wholesale distribution of obscenity or unlawful
209 sexual devices shall be fined not less than One Thousand Dollars
210 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00). If
211 such legal entity has been previously convicted of distributing
212 obscenity or unlawful sexual devices or wholesale distribution of
213 obscenity or unlawful sexual devices or of a violation of Section
214 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such
215 legal entity shall be fined not less than Five Thousand Dollars
216 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

217 **SECTION 7.** The following shall be codified as Section
218 37-11-81, Mississippi Code of 1972:

219 37-11-81. (1) A school district, charter school, the
220 Mississippi School of the Arts, the Mississippi School for
221 Mathematics and Science, the Mississippi Virtual Public School,
222 the Mississippi School for the Deaf and the Mississippi School for

223 the Blind may offer digital or online resources or databases to
224 students in kindergarten through twelfth grade only if the vendor
225 or other person or entity providing the resources verifies that
226 all the resources will comply with the provisions of subsection
227 (2) of this section.

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

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

233 (i) Child pornography;

234 (ii) Materials that depict or promote child sexual
235 exploitation or trafficking;

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

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

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

242 (b) Filter or block access to obscene materials,
243 inappropriate materials, materials that are sexually oriented or
244 materials that depict, describe or promote child pornography or
245 child sexual exploitation.

246 (c) For the purposes of this act, material is obscene,
247 if:

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

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

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

257 1. Acts of sexual intercourse of any kind,
258 normal or perverted, actual or simulated;

259 2. Acts of masturbation;

260 3. Acts involving excretory functions or lewd
261 exhibition of the genitals;

262 4. Acts of bestiality or the fondling of sex
263 organs of animals; or

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

266 (3) (a) The provisions of this section take precedence over
267 any provision in a contract between a school district or school
268 and a vendor or other person or entity providing digital or online
269 resources or databases to the contrary. Notwithstanding any
270 provision in a contract between a school district or school and a
271 provider to the contrary, if a provider of digital or online
272 resources or databases fails to comply with the requirements of
273 this section, the school district or school shall withhold further

274 payments, if any, to the provider pending verification of
275 compliance.

276 (b) Upon a first occurrence by a provider of digital or
277 online resources or databases of noncompliance with subsection (2)
278 of this section and failure to verify within thirty (30) days of
279 receiving notice of the noncompliance from a school district or
280 school that the provider is in compliance with this section, the
281 school district or school shall consider the provider's
282 noncompliance to be a breach of contract.

283 (c) Upon a second occurrence by a provider of
284 noncompliance with subsection (2) and failure to verify within
285 thirty (30) days of receiving notice of the noncompliance from a
286 school district or school that the provider is in compliance with
287 the requirements of this section, the school district or school is
288 entitled to a reduction in the amount of ten percent (10%) of the
289 agreed upon price in the contract to be paid by the school
290 district or school to the provider. The school district or school
291 shall adjust any future payments due to the provider under the
292 contract accordingly to effectuate the ten percent (10%)
293 reduction. However, if the contract price has been paid in full,
294 or if the balance owed on the contract price is equal to less than
295 ten percent (10%) of the contract price, the provider must return
296 to the school district or school such amount that is required to
297 effectuate a ten percent (10%) reduction of the contract price.

298 (d) Upon a third occurrence by a provider of
299 noncompliance with subsection (2) and failure to verify within

300 thirty (30) days of receiving notice of the noncompliance from a
301 school district or school that the provider is in compliance with
302 the requirements of this section, the contract must be considered
303 terminated and the school district or school is entitled to a
304 complete refund of the agreed upon price in the contract to be
305 paid by the school district or school to the provider. The school
306 district or school shall withhold any future payments that may be
307 due to the provider, and the provider must return to the school
308 district or school all amounts previously paid to the provider
309 under the contract.

310 (4) The State Auditor may audit a school district or
311 school's compliance with this section. A school district or
312 school must report to the State Auditor a provider's failure to
313 comply with subsection (2) of this section no later than thirty
314 (30) days after the district or school learns of the provider's
315 noncompliance.

316 **SECTION 8.** The following shall be codified as Section
317 39-3-25, Mississippi Code of 1972:

318 39-3-25. (1) A public library may offer digital or online
319 resources or databases to persons only if the vendor or other
320 person or entity providing the resources verifies that all the
321 resources will comply with the provisions of subsection (2) of
322 this section.

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

326 (a) Prohibit and prevent a person from sending,
327 receiving, viewing or downloading materials that are:
328 (i) Child pornography;
329 (ii) Materials that depict or promote child sexual
330 exploitation or trafficking;
331 (iii) Obscene materials, as defined in Section 1
332 of this act;
333 (iv) Inappropriate materials depicting or dealing
334 with matters of sex, cruelty and violence in a manner likely to be
335 injurious or harmful to a child; or
336 (v) Materials that are sexually oriented, as
337 defined in Section 97-5-27(2); and
338 (b) Filter or block access to obscene materials,
339 inappropriate materials, materials that are sexually oriented or
340 materials that depict, describe or promote child pornography or
341 child sexual exploitation.

342 (3) (a) The provisions of this section take precedence over
343 any provision in a contract between a public library and a vendor
344 or other person or entity providing digital or online resources or
345 databases to the contrary. Notwithstanding any provision in a
346 contract between a public library and a provider to the contrary,
347 if a provider of digital or online resources or databases fails to
348 comply with the requirements of this section, the library shall
349 withhold further payments, if any, to the provider pending
350 verification of compliance.

351 (b) Upon a first occurrence by a provider of digital or
352 online resources or databases of noncompliance with subsection (2)
353 of this section and failure to verify within thirty (30) days of
354 receiving notice of the noncompliance from a public library that
355 the provider is in compliance with this section, the library shall
356 consider the provider's noncompliance to be a breach of contract.

357 (c) Upon a second occurrence by a provider of
358 noncompliance with subsection (2) and failure to verify within
359 thirty (30) days of receiving notice of the noncompliance from a
360 public library that the provider is in compliance with the
361 requirements of this section, the library is entitled to a
362 reduction in the amount of ten percent (10%) of the agreed upon
363 price in the contract to be paid by the library to the provider.
364 The library shall adjust any future payments due to the provider
365 under the contract accordingly to effectuate the ten percent (10%)
366 reduction. However, if the contract price has been paid in full,
367 or if the balance owed on the contract price is equal to less than
368 ten percent (10%) of the contract price, the provider must return
369 to the library such amount that is required to effectuate a ten
370 percent (10%) reduction of the contract price.

371 (d) Upon a third occurrence by a provider of
372 noncompliance with subsection (2) and failure to verify within
373 thirty (30) days of receiving notice of the noncompliance from a
374 public library that the provider is in compliance with the
375 requirements of this section, the contract must be considered
376 terminated and the library is entitled to a complete refund of the

377 agreed upon price in the contract to be paid by the library to the
378 provider. The library shall withhold any future payments that may
379 be due to the provider, and the provider must return to the
380 library all amounts previously paid to the provider under the
381 contract.

382 (4) The State Auditor may audit a public library's
383 compliance with this section. A public library must report to the
384 State Auditor a provider's failure to comply with subsection (2)
385 of this section no later than thirty (30) days after the library
386 learns of the provider's noncompliance.

387 **SECTION 9.** Section 97-5-27, Mississippi Code of 1972, is
388 brought forward as follows:

389 97-5-27. (1) Any person who intentionally and knowingly
390 disseminates sexually oriented material to any person under
391 eighteen (18) years of age shall be guilty of a misdemeanor and,
392 upon conviction, shall be fined for each offense not less than
393 Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
394 (\$5,000.00) or be imprisoned for not more than one (1) year in the
395 county jail, or be punished by both such fine and imprisonment. A
396 person disseminates sexually oriented material within the meaning
397 of this section if he:

398 (a) Sells, delivers or provides, or offers or agrees to
399 sell, deliver or provide, any sexually oriented writing, picture,
400 record or other representation or embodiment that is sexually
401 oriented; or

402 (b) Presents or directs a sexually oriented play, dance
403 or other performance or participates directly in that portion
404 thereof which makes it sexually oriented; or

405 (c) Exhibits, presents, rents, sells, delivers or
406 provides, or offers or agrees to exhibit, present, rent or to
407 provide any sexually oriented still or motion picture, film,
408 filmstrip or projection slide, or sound recording, sound tape or
409 sound track or any matter or material of whatever form which is a
410 representation, embodiment, performance or publication that is
411 sexually oriented.

412 (2) For purposes of this section, any material is sexually
413 oriented if the material contains representations or descriptions,
414 actual or simulated, of masturbation, sodomy, excretory functions,
415 lewd exhibition of the genitals or female breasts, sadomasochistic
416 abuse (for the purpose of sexual stimulation or gratification),
417 homosexuality, lesbianism, bestiality, sexual intercourse, or
418 physical contact with a person's clothed or unclothed genitals,
419 pubic area, buttocks, or the breast or breasts of a female for the
420 purpose of sexual stimulation, gratification or perversion.

421 (3) (a) A person is guilty of computer luring when:

422 (i) Knowing the character and content of any
423 communication of sexually oriented material, he intentionally uses
424 any computer communication system allowing the input, output,
425 examination or transfer of computer data or computer programs from
426 one (1) computer to another, to initiate or engage in such
427 communication with a person under the age of eighteen (18); and

428 (ii) By means of such communication he importunes,
429 invites or induces a person under the age of eighteen (18) years
430 to engage in sexual intercourse, deviant sexual intercourse or
431 sexual contact with him, or to engage in a sexual performance,
432 obscene sexual performance or sexual conduct for his benefit.

433 (b) A person who engages in the conduct proscribed by
434 this subsection (3) is presumed to do so with knowledge of the
435 character and content of the material.

436 (c) In any prosecution for computer luring, it shall be
437 a defense that:

438 (i) The defendant made a reasonable effort to
439 ascertain the true age of the minor and was unable to do so as a
440 result of actions taken by the minor; or

441 (ii) The defendant has taken, in good faith,
442 reasonable, effective and appropriate actions under the
443 circumstances to restrict or prevent access by minors to the
444 materials prohibited, which may involve any appropriate measures
445 to restrict minors from access to such communications, including
446 any method which is feasible under available technology; or

447 (iii) The defendant has restricted access to such
448 materials by requiring use of a verified credit card, debit
449 account, adult access code or adult personal identification
450 number; or

451 (iv) The defendant has in good faith established a
452 mechanism such that the labeling, segregation or other mechanism
453 enables such material to be automatically blocked or screened by

454 software or other capabilities reasonably available to responsible
455 adults wishing to effect such blocking or screening and the
456 defendant has not otherwise solicited minors not subject to such
457 screening or blocking capabilities to access that material or to
458 circumvent any such screening or blocking.

459 (d) In any prosecution for computer luring:

460 (i) No person shall be held to have violated this
461 subsection (3) solely for providing access or connection to or
462 from a facility, system, or network not under that person's
463 control, including transmission, downloading, intermediate
464 storage, access software or other related capabilities that are
465 incidental to providing such access or connection that do not
466 include the creation of the content of the communication.

467 (ii) No employer shall be held liable for the
468 actions of an employee or agent unless the employee's or agent's
469 conduct is within the scope of his employment or agency or the
470 employer, having knowledge of such conduct, authorizes or ratifies
471 such conduct, or recklessly disregards such conduct.

472 (iii) The limitations provided by this paragraph
473 (d) shall not be applicable to a person who is a conspirator with
474 an entity actively involved in the creation or knowing
475 distribution of communications that violate such provisions, or
476 who knowingly advertises the availability of such communications,
477 nor to a person who provides access or connection to a facility,
478 system or network engaged in the violation of such provisions that
479 is owned or controlled by such person.

480 (e) Computer luring is a felony, and any person
481 convicted thereof shall be punished by commitment to the custody
482 of the Department of Corrections for a term not to exceed three
483 (3) years and by a fine not to exceed Ten Thousand Dollars
484 (\$10,000.00).

485 (4) Investigation and prosecution of a defendant under this
486 section does not preclude prosecution of the defendant for a
487 violation of other applicable criminal laws, including, but not
488 limited to, the Mississippi Human Trafficking Act, Section 97-3-54
489 et seq.

490 **SECTION 10.** Section 97-5-29, Mississippi Code of 1972, is
491 brought forward as follows:

492 97-5-29. (1) Any person who intentionally and knowingly
493 places sexually oriented materials upon public display, or who
494 knowingly and intentionally fails to take prompt action to remove
495 such a display from property in his possession after learning of
496 its existence shall be guilty of a misdemeanor and upon conviction
497 shall be fined for each offense not less than Five Hundred Dollars
498 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be
499 imprisoned for not more than one (1) year in the county jail, or
500 be punished by both such fine and imprisonment.

501 (2) For purposes of this section any material is sexually
502 oriented if the material consists of representations or
503 descriptions of actual or simulated masturbation, sodomy,
504 excretory functions, lewd exhibition of the genitals or female
505 breasts, sadomasochistic abuse (for the purpose of sexual

506 stimulation or gratification), homosexuality, lesbianism,
507 bestiality, sexual intercourse or physical contact with a person's
508 clothed or unclothed genitals, pubic area, buttocks or the breast
509 or breasts of a female for the purpose of sexual stimulation,
510 gratification or perversion.

511 (3) A person places sexually oriented material upon public
512 display within the meaning of this section if he places the
513 material on or in a billboard, viewing screen, theater stage or
514 marquee, newsstand, display rack, window, showcase, display case
515 or other similar place, including a viewing screen in a vehicle,
516 so that sexually oriented material is easily visible from a public
517 street, public road or sidewalk or from areas of public businesses
518 in which minors are normally business invitees.

519 **SECTION 11.** Section 97-5-31, Mississippi Code of 1972, is
520 brought forward as follows:

521 97-5-31. As used in Sections 97-5-33 through 97-5-37, the
522 following words and phrases shall have the meanings given to them
523 in this section:

524 (a) "Child" means any individual who has not attained
525 the age of eighteen (18) years.

526 (b) "Sexually explicit conduct" means actual or
527 simulated:

528 (i) Oral genital contact, oral anal contact, or
529 sexual intercourse as defined in Section 97-3-65, whether between
530 persons of the same or opposite sex;

531 (ii) Bestiality;

532 (iii) Masturbation;
533 (iv) Sadistic or masochistic abuse;
534 (v) Lascivious exhibition of the genitals or pubic
535 area of any person; or

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

538 (c) "Producing" means producing, directing,
539 manufacturing, issuing, publishing or advertising.

540 (d) "Visual depiction" includes, without limitation,
541 developed or undeveloped film and video tape or other visual
542 unaltered reproductions by computer.

543 (e) "Computer" has the meaning given in Title 18,
544 United States Code, Section 1030.

545 (f) "Simulated" means any depicting of the genitals or
546 rectal areas that gives the appearance of sexual conduct or
547 incipient sexual conduct.

548 **SECTION 12.** Section 97-5-33, Mississippi Code of 1972, is
549 brought forward as follows:

550 97-5-33. (1) No person shall, by any means including
551 computer, cause, solicit or knowingly permit any child to engage
552 in sexually explicit conduct or in the simulation of sexually
553 explicit conduct for the purpose of producing any visual depiction
554 of such conduct.

555 (2) No person shall, by any means including computer,
556 photograph, film, video tape or otherwise depict or record a child

557 engaging in sexually explicit conduct or in the simulation of
558 sexually explicit conduct.

559 (3) No person shall, by any means including computer,
560 knowingly send, transport, transmit, ship, mail or receive any
561 photograph, drawing, sketch, film, video tape or other visual
562 depiction of an actual child engaging in sexually explicit
563 conduct.

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

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

574 (6) No person shall, by any means including computer,
575 knowingly entice, induce, persuade, seduce, solicit, advise,
576 coerce, or order a child to meet with the defendant or any other
577 person for the purpose of engaging in sexually explicit conduct.

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

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

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

592 **SECTION 13.** Section 97-5-37, Mississippi Code of 1972, is
593 brought forward as follows:

594 97-5-37. The provisions of Sections 97-5-31 through 97-5-37
595 are supplemental to any statute relating to child abuse or
596 neglect, obscenity, enticement of children or contributing to
597 delinquency of a minor and acquittal or conviction pursuant to any
598 other statute shall not be a bar to prosecution under Sections
599 97-5-31 through 97-5-37. Acquittal or conviction under Sections
600 97-5-31 through 97-5-37 shall not be a bar to prosecution and
601 conviction under other statutes defining crimes or misdemeanors,
602 nor to any civil or administrative remedy otherwise available.

603 **SECTION 14.** Section 97-29-101, Mississippi Code of 1972, is
604 brought forward as follows:

605 97-29-101. A person commits the offense of distributing
606 obscene materials or obscene performances when he sells, rents,
607 leases, advertises, publishes or exhibits to any person any

608 obscene material or obscene performance of any description knowing
609 the obscene nature thereof, or offers to do so, or possesses such
610 material with the intent to do so. A person commits the offense
611 of wholesale distributing obscene materials or obscene
612 performances when he distributes for the purpose of resale any
613 obscene material or obscene performance of any description knowing
614 the obscene nature thereof, or offers to do so, or possesses such
615 material with the intent to do so. The word "knowing" as used in
616 this section means either actual or constructive knowledge of the
617 obscene contents of the subject matter, and a person has
618 constructive knowledge of the obscene contents if he has knowledge
619 of facts which would put a reasonable and prudent person on notice
620 as to the suspect nature of the material. The character and
621 reputation of an individual charged with an offense under Sections
622 97-29-101 through 97-29-109 and, if a commercial dissemination of
623 obscene material or an obscene performance is involved, the
624 character and reputation of the business establishment involved,
625 may be placed in evidence by the defendant on the question of
626 intent to violate Sections 97-29-101 through 97-29-109.

627 Any person, other than a city attorney, county prosecuting
628 attorney or district attorney, who shall sign an affidavit
629 charging an offense prescribed by this section shall file a bond
630 in the amount of Five Hundred Dollars (\$500.00) at the time such
631 affidavit is lodged. Such bond shall be conditioned that the
632 affidavit was not filed frivolously, maliciously or out of ill
633 will.

634 **SECTION 15.** Section 97-29-107, Mississippi Code of 1972, is
635 brought forward as follows:

636 97-29-107. (1) Sections 97-29-101 through 97-29-109 shall
637 not apply when the distribution or wholesale distribution of the
638 material, performance or device was made by:

639 (a) A person, corporation, company, partnership, firm,
640 association, business, establishment or other legal entity to a
641 person associated with an institution of higher learning, either
642 as a member of the faculty or as a matriculated student, teaching
643 or pursuing a course of study related to such material,
644 performance or device;

645 (b) A licensed physician or a licensed psychologist to
646 a person whose receipt of such material or device was authorized
647 in writing by such physician or psychologist in the course of
648 medical or psychological treatment or care;

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

655 (d) A community television antenna services system or a
656 cable television system operating pursuant to a written agreement
657 not in conflict with this paragraph granted by a county,
658 municipality or other political subdivision of this state, or by
659 an employee of such system while acting within the scope of his

660 employment, when the signal transmitting the material or
661 performance originates outside of the State of Mississippi.

662 (2) Any exemption from prosecution claimed under the
663 provisions of this section may be raised at a pretrial hearing by
664 motion, and the court shall determine whether sufficient evidence
665 exists to constitute an exemption from prosecution under the
666 provisions of Sections 97-29-101 through 97-29-109. If the motion
667 is sustained, the case shall be dismissed; provided, however, if
668 the motion is not sustained then the defendant may offer into
669 evidence at trial as an affirmative defense to conviction under
670 Sections 97-29-101 through 97-29-109 any matter which could have
671 been raised by the defendant in the motion to dismiss.

672 **SECTION 16.** Section 97-29-109, Mississippi Code of 1972, is
673 brought forward as follows:

674 97-29-109. Any person, except one who wholesale distributes,
675 who violates Section 97-29-101 or Section 97-29-105 shall be
676 guilty of a misdemeanor and, upon conviction, shall, in the case
677 of the first offense, be fined not more than Five Thousand Dollars
678 (\$5,000.00) or imprisoned in the county jail for a term not to
679 exceed six (6) months, or both. If the person has been previously
680 convicted of a violation of Section 97-29-101 or Section 97-29-105
681 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then
682 the person shall be fined not less than Two Thousand Five Hundred
683 Dollars (\$2,500.00) nor more than Ten Thousand Dollars
684 (\$10,000.00) or imprisoned for a term not to exceed one (1) year,
685 or both.

686 Any person who wholesale distributes in violation of Section
687 97-29-101 or Section 97-29-105 shall, upon conviction, be fined
688 not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for
689 a term not to exceed one (1) year, or both. If the person has
690 been previously convicted of a violation of Section 97-29-101 or
691 Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi
692 Code of 1972, then the person shall, upon conviction, be fined not
693 less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more
694 than Fifty Thousand Dollars (\$50,000.00) or imprisoned for a term
695 not to exceed one (1) year, or both.

696 A corporation, company, partnership, firm, association,
697 business, establishment, organization or other legal entity other
698 than an individual convicted of distributing obscenity or unlawful
699 sexual devices or wholesale distribution of obscenity or unlawful
700 sexual devices shall be fined not less than One Thousand Dollars
701 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00). If
702 such legal entity has been previously convicted of distributing
703 obscenity or unlawful sexual devices or wholesale distribution of
704 obscenity or unlawful sexual devices or of a violation of Section
705 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such
706 legal entity shall be fined not less than Five Thousand Dollars
707 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

708 **SECTION 17.** If any section, paragraph, sentence, clause,
709 phrase or any part of this act passed on or after the effective
710 date of this act is declared to be unconstitutional or void, or if
711 for any reason is declared to be invalid or of no effect, the

712 remaining sections, paragraphs, sentences, clauses, phrases or
713 parts of this act shall be in no manner affected thereby but shall
714 remain in full force and effect.

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

720 **SECTION 18.** This act shall take effect and be in force from
721 and after July 1, 2023, and shall stand repealed on June 30, 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;
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; TO CREATE NEW SECTIONS
9 37-11-81 AND 39-3-25, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
10 PUBLIC SCHOOLS, CHARTER SCHOOLS, THE MISSISSIPPI SCHOOL OF THE
11 ARTS, THE MISSISSIPPI SCHOOL FOR MATHEMATICS AND SCIENCE, THE
12 MISSISSIPPI VIRTUAL PUBLIC SCHOOL, THE MISSISSIPPI SCHOOL FOR THE
13 DEAF, THE MISSISSIPPI SCHOOL FOR THE BLIND AND PUBLIC LIBRARIES TO
14 OFFER DIGITAL OR ONLINE RESOURCES OR DATABASES TO PERSONS ONLY IF
15 THE VENDOR PROVIDING THOSE RESOURCES VERIFIES THAT IT HAS IN PLACE
16 SAFETY POLICIES AND TECHNOLOGY PROTECTION MEASURES THAT PROHIBIT
17 CHILDREN FROM ACCESSING AND SENDING CHILD PORNOGRAPHY, OBSCENE AND
18 SEXUALLY ORIENTED MATERIALS AND OTHER MATERIALS HARMFUL TO
19 CHILDREN; TO ESTABLISH MONETARY PENALTIES FOR A VENDOR THAT FAILS
20 TO CORRECT NONCOMPLIANCE; TO REQUIRE REPORTS OF NONCOMPLIANCE TO
21 BE MADE TO THE STATE AUDITOR; TO BRING FORWARD SECTIONS 97-5-27,
22 97-5-29, 97-5-31, 97-5-33, 97-5-37, 97-29-101, 97-29-107 and
23 97-29-109, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE
24 AMENDMENTS; TO PROVIDE SEVERABILITY IF ANY PART OF THIS ACT IS
25 FOUND UNCONSTITUTIONAL; AND FOR RELATED PURPOSES.

HR43\SB2346PH.J

Andrew Ketchings
Clerk of the House of Representatives