

Senate Amendments to House Bill No. 1315

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE 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:

24 SECTION 1. The Legislature finds that pornography
25 contributes to:

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

28 (b) An increase in problematic sexual activity at
29 younger ages, and increased desire among adolescents to engage in
30 risky sexual behavior;

31 (c) Difficulty in forming or maintaining positive,
32 intimate relationships, as well as promoting problematic or
33 harmful sexual behaviors and addiction; and

34 (d) A negative impact brain development and
35 functioning, contribute to emotional and medical illnesses, shape
36 deviant sexual arousal.

37 SECTION 2. As used in Sections 1 through 4 of this act, the
38 following words shall have the meanings ascribed herein unless the
39 context clearly indicates otherwise:

40 (a) "Commercial entity" includes corporations, limited
41 liability companies, partnerships, limited partnerships, sole
42 proprietorships, or other legally recognized entities.

43 (b) "Distribute" means to issue, sell, give, provide,
44 deliver, transfer, transmute, circulate, or disseminate by any
45 means.

46 (c) "Internet" means the international computer network
47 of both federal and nonfederal interoperable packet switched data
48 networks.

49 (d) "Material harmful to minors" is defined as all of
50 the following:

51 (i) Any material that the average person, applying
52 contemporary community standards would find, taking the material
53 as a whole and with respect to minors, is designed to appeal to,
54 or is designed to pander to, the prurient interest, including, but
55 not limited to, child pornography or material that depicts or
56 promotes child sexual exploitation or trafficking.

57 (ii) Any of the following material that exploits,
58 is 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 1. Pubic hair, anus, vulva, genitals, or
62 nipple of the female breast.

63 2. Touching, caressing, or fondling of
64 nipples, breasts, buttocks, anuses, or genitals.

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

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

70 (iv) The material is sexually oriented, as defined
71 in Section 97-5-27(2).

72 (e) "Minor" means any person under the age of eighteen
73 (18) years.

74 (f) "News-gathering organization" means any of the
75 following:

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

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

86 (g) "Publish" means to communicate or make information
87 available to another person or entity on a publicly available
88 internet website.

89 (h) "Reasonable age verification methods" include
90 verifying that the person seeking to access the material is

91 eighteen (18) years of age or older by using any of the following
92 methods:

93 (i) Provide a digitized identification card;

94 (ii) Require the person attempting to access the
95 material to comply with a commercial age verification system that
96 verifies in one or more of the following ways:

97 1. Government-issued identification; or

98 2. Any commercially reasonable method that
99 relies on public or private transactional data to verify the age
100 of the person attempting to access the information is at least
101 eighteen (18) years of age or older.

102 (i) "Substantial portion" means more than thirty-three
103 and one-third (33-1/3) percent of total material on a website,
104 which meets the definition of "material harmful to minors" as
105 defined by this section.

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

112 **SECTION 3.** (1) Any commercial entity that knowingly and
113 intentionally publishes or distributes material harmful to minors
114 on the internet from a website that contains a substantial portion
115 of such material shall be held liable if the entity fails to

116 perform reasonable age verification methods to verify the age of
117 individuals attempting to access the material.

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

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

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

132 (4) (a) A commercial entity or other person or vendor
133 providing digital or online resources or databases to students in
134 a public school district, charter school, the Mississippi School
135 of the Arts, the Mississippi School for Mathematics and Science,
136 the Mississippi Virtual Public School, the Mississippi School for
137 the Deaf and the Mississippi School for the Blind, or a minor in a
138 public library, shall implement safety policies and technology
139 protection measures that filter, block access to, or otherwise
140 prohibit and prevent a minor from sending, receiving, viewing or
141 downloading material harmful to minors.

142 (b) The provisions of this subsection take precedence
143 over any contrary provision in a contract. Notwithstanding any
144 contractual provision to the contrary in a contract between a
145 public school district, upon a first occurrence of noncompliance
146 with this subsection by a commercial entity or other person or
147 vendor providing digital or online resources or databases, the
148 state, or any of its agencies, or any public school district,
149 local education agency, public school, public library or charter
150 school is entitled to a reduction in the amount of ten percent
151 (10%) of the agreed upon price in the contract to be paid to the
152 provider. Upon a subsequent occurrence of noncompliance with this
153 subsection by a commercial entity or other person or vendor
154 providing digital or online resources or databases, the state or
155 any of its agencies, or any public school district, local
156 education agency, public school, public library or charter school
157 is entitled to a complete refund of the agreed upon price of the
158 contract to be paid to the provider.

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

163 (2) No internet service provider, or its affiliates or
164 subsidiaries, search engine, or cloud service provider shall be
165 held to have violated the provisions of this act for providing
166 access or connection to or from a website or other information or
167 content on the internet or a facility, system, or network not

168 under that provider's control, including transmission,
169 downloading, storage, access software, or other to the extent such
170 provider is not responsible for the creation of the content of the
171 communication that constitutes material harmful to minors.

172 **SECTION 5.** Section 97-29-109, Mississippi Code of 1972, is
173 brought forward as follows:

174 97-29-109. Any person, except one who wholesale distributes,
175 who violates Section 97-29-101 or Section 97-29-105 shall be
176 guilty of a misdemeanor and, upon conviction, shall, in the case
177 of the first offense, be fined not more than Five Thousand Dollars
178 (\$5,000.00) or imprisoned in the county jail for a term not to
179 exceed six (6) months, or both. If the person has been previously
180 convicted of a violation of Section 97-29-101 or Section 97-29-105
181 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then
182 the person shall be fined not less than Two Thousand Five Hundred
183 Dollars (\$2,500.00) nor more than Ten Thousand Dollars
184 (\$10,000.00) or imprisoned for a term not to exceed one (1) year,
185 or both.

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

194 than Fifty Thousand Dollars (\$50,000.00) or imprisoned for a term
195 not to exceed one (1) year, or both.

196 A corporation, company, partnership, firm, association,
197 business, establishment, organization or other legal entity other
198 than an individual convicted of distributing obscenity or unlawful
199 sexual devices or wholesale distribution of obscenity or unlawful
200 sexual devices shall be fined not less than One Thousand Dollars
201 (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00). If
202 such legal entity has been previously convicted of distributing
203 obscenity or unlawful sexual devices or wholesale distribution of
204 obscenity or unlawful sexual devices or of a violation of Section
205 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such
206 legal entity shall be fined not less than Five Thousand Dollars
207 (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00).

208 **SECTION 6.** This act shall take effect and be in force from
209 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 REQUIRE A
6 COMMERCIAL ENTITY OR OTHER PERSON OR VENDOR PROVIDING DIGITAL OR
7 ONLINE RESOURCES OR DATABASES TO STUDENTS IN A PUBLIC 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 AND THE
11 MISSISSIPPI SCHOOL FOR THE BLIND, OR A MINOR IN A PUBLIC LIBRARY,
12 TO IMPLEMENT SAFETY POLICIES AND TECHNOLOGY PROTECTION MEASURES
13 THAT FILTER, BLOCK ACCESS TO, OR OTHERWISE PROHIBIT AND PREVENT A
14 MINOR FROM SENDING, RECEIVING, VIEWING OR DOWNLOADING MATERIAL

15 HARMFUL TO MINORS; TO PROVIDE THAT THE REQUIREMENT TO IMPLEMENT
16 SAFETY POLICIES AND TECHNOLOGY PROTECTION MEASURES TAKE PRECEDENCE
17 OVER ANY CONTRARY PROVISION IN A CONTRACT; TO PROVIDE FOR CERTAIN
18 PENALTIES UPON NONCOMPLIANCE BY A COMMERCIAL ENTITY OR OTHER
19 PERSON OR VENDOR; TO BRING FORWARD SECTION 97-29-109, MISSISSIPPI
20 CODE OF 1972, WHICH PROVIDES THE EXEMPTIONS AND PENALTIES FOR
21 DISTRIBUTION OF OBSCENE MATERIALS, FOR PURPOSES OF AMENDMENT; AND
22 FOR RELATED PURPOSES.

SS26\HB1315PS.J

Eugene S. Clarke
Secretary of the Senate