

By: Representative Wallace

To: Judiciary A

HOUSE BILL NO. 1363

1 AN ACT TO AMEND SECTION 11-77-3, MISSISSIPPI CODE OF 1972, TO
 2 DEFINE THE TERMS "CHILD PORNOGRAPHY" AND "OBSCENE MATTER" AS USED
 3 UNDER STATUTES CREATING A CIVIL LIABILITY FOR DISTRIBUTION OF
 4 CERTAIN MATERIALS ON THE INTERNET BY COMMERCIAL ENTITIES; TO
 5 CREATE NEW SECTION 11-77-6, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
 6 COMMERCIAL ENTITIES THAT KNOWINGLY AND INTENTIONALLY PUBLISH SUCH
 7 MATERIAL ON THE INTERNET TO BE HELD CIVILLY LIABLE FOR DAMAGES TO
 8 INDIVIDUALS; TO AMEND SECTION 11-77-7, MISSISSIPPI CODE OF 1972,
 9 TO PROVIDE THAT AN INTERNET SERVICE PROVIDER AND OTHER ENTITIES
 10 PROVIDING INTERNET CONNECTIVITY MAY NOT BE HELD LIABLE TO THE
 11 EXTENT THAT THE PROVIDER IS NOT RESPONSIBLE FOR CONTENT CREATION;
 12 TO CREATE NEW SECTION 11-77-9, MISSISSIPPI CODE OF 1972, TO
 13 PROVIDE FOR THE SEVERABILITY OF PROVISIONS; AND FOR RELATED
 14 PURPOSES.

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

16 **SECTION 1.** Section 11-77-3, Mississippi Code of 1972, is
 17 amended as follows:

18 11-77-3. The following words shall have the meanings
 19 described herein:

20 (a) "Child pornography" or "child sexual exploitation"
 21 means those acts that are included in the definition of "sexually
 22 explicit conduct" under Section 97-5-31.



23 (* * *b) "Commercial entity" includes corporations,
24 limited liability companies, partnerships, limited partnerships,
25 sole proprietorships, or other legally recognized entities.

26 (* * *c) "Distribute" means to issue, sell, give,
27 provide, deliver, transfer, * * * transmit, circulate, or
28 disseminate by any means.

29 (* * *d) "Internet" means the international computer
30 network of both federal and nonfederal interoperable packet
31 switched data networks.

32 (* * *e) "Material harmful to minors" is defined as
33 all of the following:

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

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

42 1. Pubic hair, anus, vulva, genitals, or
43 nipple of the female breast.

44 2. Touching, caressing, or fondling of
45 nipples, breasts, buttocks, anuses, or genitals.



46 3. Sexual intercourse, masturbation, sodomy,
47 bestiality, oral copulation, flagellation, excretory functions,
48 exhibitions, or any other sexual act.

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

51 (* * *f) "Minor" means any person under the age of
52 eighteen (18) years.

53 (* * *g) "News-gathering organization" means any of
54 the following:

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

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

65 (h) "Obscene matter" has the same meaning as provided
66 under Section 97-29-103(1).

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



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

74 (i) Provide a digitized identification card;

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

78 1. Government-issued identification; or

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

83 (* * *k) "Substantial portion" means more than
84 thirty-three and one-third (33-1/3) percent of total material on a
85 website, which meets the definition of "material harmful to
86 minors" as defined by this section.

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

93 **SECTION 2.** The following shall be codified as Section
94 11-77-6, Mississippi Code of 1972:



95 11-77-6. (1) A commercial entity that knowingly and
96 intentionally publishes or distributes obscene matter or matter
97 that depicts, describes or promotes child pornography or child
98 sexual exploitation on the internet may be held liable to an
99 individual for nominal damages, actual damages, court costs and
100 reasonable attorney fees as ordered by the court.

101 (2) A commercial entity that violates this section in a
102 manner that satisfies the legal standards for the imposition of
103 punitive damages may be held liable to an individual for punitive
104 damages.

105 (3) Individual claims that satisfy the generally applicable
106 legal standards for joinder or class action may be combined into a
107 single action.

108 **SECTION 3.** Section 11-77-7, Mississippi Code of 1972, is
109 amended as follows:

110 11-77-7. (1) The provisions of this act shall not apply to
111 any bona fide news or public interest broadcast, website video,
112 report, or event and shall not be construed to affect the rights
113 of any news-gathering organizations.

114 (2) No internet service provider, * * * affiliate or
115 subsidiary of an internet service provider, search engine, or
116 cloud service provider shall be held to have violated the
117 provisions of this * * * chapter solely for providing access or
118 connection to or from a website or other information or content on
119 the internet or a facility, system, or network not under that



120 provider's control, including transmission, downloading, storage,
121 providing access * * *, or other to the extent such provider is
122 not responsible for the creation of the content of the
123 communication that constitutes material harmful to minors, obscene
124 matter, or matter that depicts, describes or promotes child
125 pornography or child sexual exploitation.

126 **SECTION 4.** The following shall be codified as Section
127 11-77-9, Mississippi Code of 1972:

128 11-77-9. If any one or more provisions, sections,
129 subsections, sentences, clauses, phrases or words of this chapter
130 or the application thereof to any person or circumstance is found
131 to be unconstitutional, the same is declared to be severable, and
132 the balance of this chapter shall remain in effect.

133 **SECTION 5.** This act shall take effect and be in force from
134 and after July 1, 2024.

