

By: Senator(s) Burton

To: Juvenile Justice

SENATE BILL NO. 2146

1 AN ACT TO AMEND SECTION 97-5-27, MISSISSIPPI CODE OF 1972, TO
2 PROHIBIT DISSEMINATION OF INDECENT MATERIALS ONLINE TO CERTAIN
3 MINORS FOR THE SPECIFIC PURPOSE OF INDUCING THEM TO ENGAGE IN
4 SEXUAL ACTS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 97-5-27, Mississippi Code of 1972, is
7 amended as follows:

8 97-5-27. (1) Any person who intentionally and knowingly
9 disseminates sexually oriented material to any person under
10 eighteen (18) years of age shall be guilty of a misdemeanor and
11 upon conviction shall be fined for each offense not less than Five
12 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
13 (\$5,000.00) or be imprisoned for not more than one (1) year in the
14 county jail, or be punished by both such fine and imprisonment. A
15 person disseminates sexually oriented material within the meaning
16 of this section if he:

17 (a) Sells, delivers or provides, or offers or agrees to
18 sell, deliver or provide, any sexually oriented writing, picture,
19 record or other representation or embodiment that is sexually
20 oriented; or

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

24 (c) Exhibits, presents, rents, sells, delivers or
25 provides, or offers or agrees to exhibit, present, rent or to
26 provide any sexually oriented still or motion picture, film,
27 filmstrip or projection slide, or sound recording, sound tape or

28 sound track or any matter or material of whatever form which is a
29 representation, embodiment, performance or publication that is
30 sexually oriented.

31 (2) For purposes of this section, any material is sexually
32 oriented if the material contains representations or descriptions,
33 actual or simulated, of masturbation, sodomy, excretory functions,
34 lewd exhibition of the genitals or female breasts, sadomasochistic
35 abuse (for the purpose of sexual stimulation or gratification),
36 homosexuality, lesbianism, bestiality, sexual intercourse, or
37 physical contact with a person's clothed or unclothed genitals,
38 pubic area, buttocks, or the breast or breasts of a female for the
39 purpose of sexual stimulation, gratification or perversion.

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

41 (i) Knowing the character and content of any
42 communication of sexually oriented material, he intentionally uses
43 any computer communication system allowing the input, output,
44 examination or transfer of computer data or computer programs from
45 one computer to another, to initiate or engage in such

46 communication with a person under the age of eighteen (18); and

47 (ii) By means of such communication he importunes,
48 invites or induces a person under the age of eighteen (18) years
49 to engage in sexual intercourse, deviant sexual intercourse or
50 sexual contact with him, or to engage in a sexual performance,
51 obscene sexual performance or sexual conduct for his benefit.

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

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

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

60 (ii) The defendant has taken, in good faith,
61 reasonable, effective and appropriate actions under the
62 circumstances to restrict or prevent access by minors to the
63 materials prohibited, which may involve any appropriate measures
64 to restrict minors from access to such communications, including
65 any method which is feasible under available technology; or

66 (iii) The defendant has restricted access to such
67 materials by requiring use of a verified credit card, debit
68 account, adult access code or adult personal identification
69 number; or

70 (iv) The defendant has in good faith established a
71 mechanism such that the labeling, segregation or other mechanism
72 enables such material to be automatically blocked or screened by
73 software or other capabilities reasonably available to responsible
74 adults wishing to effect such blocking or screening and the
75 defendant has not otherwise solicited minors not subject to such
76 screening or blocking capabilities to access that material or to
77 circumvent any such screening or blocking.

78 (d) In any prosecution for computer luring:

79 (i) No person shall be held to have violated this
80 subsection (3) solely for providing access or connection to or
81 from a facility, system, or network not under that person's
82 control, including transmission, downloading, intermediate
83 storage, access software or other related capabilities that are
84 incidental to providing such access or connection that do not
85 include the creation of the content of the communication.

86 (ii) No employer shall be held liable for the
87 actions of an employee or agent unless the employee's or agent's
88 conduct is within the scope of his employment or agency or the
89 employer, having knowledge of such conduct, authorizes or ratifies
90 such conduct, or recklessly disregards such conduct.

91 (iii) The limitations provided by this paragraph

92 (d) shall not be applicable to a person who is a conspirator with

93 an entity actively involved in the creation or knowing
94 distribution of communications that violate such provisions, or
95 who knowingly advertises the availability of such communications,
96 nor to a person who provides access or connection to a facility,
97 system or network engaged in the violation of such provisions that
98 is owned or controlled by such person.

99 (e) Computer luring is a felony, and any person
100 convicted thereof shall be punished by commitment to the custody
101 of the Department of Corrections for a term not to exceed three
102 (3) years and by a fine not to exceed Ten Thousand Dollars
103 (\$10,000.00).

104 SECTION 2. This act shall take effect and be in force from
105 and after July 1, 2001.