

By: Representatives Franks, Scott (80th)

To: Judiciary B

HOUSE BILL NO. 1552

1 AN ACT TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, TO  
 2 CLARIFY THAT THE USE OF THE INTERNET TO EXPLOIT CHILDREN IS  
 3 UNLAWFUL; TO PROVIDE THAT INTERNET SERVICE PROVIDERS SHALL NOT BE  
 4 CRIMINALLY LIABLE FOR THE ACTIONS OF A CUSTOMER IF THE PROVIDER  
 5 HAS NO KNOWLEDGE OF SUCH ACTIONS; TO AMEND SECTION 97-5-35,  
 6 MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR THE EXPLOITATION  
 7 OF CHILDREN; TO AMEND SECTIONS 97-19-11, 97-19-13, 97-19-21 AND  
 8 97-19-31, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE USE OF  
 9 TELECOMMUNICATION DEVICES AND THE INTERNET SHALL APPLY IN CREDIT  
 10 CARD FRAUD SITUATIONS; TO REVISE PENALTIES; AND FOR RELATED  
 11 PURPOSES.

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

13 **SECTION 1.** Section 97-5-33, Mississippi Code of 1972, is  
 14 amended as follows:

15 97-5-33. (1) No person shall, by any means including  
 16 computer, cause or knowingly permit any child to engage in  
 17 sexually explicit conduct or in the simulation of sexually  
 18 explicit conduct for the purpose of producing any visual depiction  
 19 of such conduct.

20 (2) No person shall photograph, draw, sketch, film, video  
 21 tape or otherwise depict or record a child engaging in sexually  
 22 explicit conduct or in the simulation of sexually explicit  
 23 conduct.

24 (3) No person shall knowingly send, transport, transport  
 25 through the Internet, any photograph, drawing, sketch, film, video  
 26 tape or other visual depiction depicting a child engaging in  
 27 sexually explicit conduct.

28 (4) No person shall receive with intent to distribute,  
 29 distribute for sale, sell or attempt to sell in any manner any  
 30 photograph, drawing, sketch, film or video tape which depicts a  
 31 child engaging in sexually explicit conduct.



32 (5) No person shall possess any photograph, drawing, sketch,  
33 film or video tape which depicts a child engaging in sexually  
34 explicit conduct.

35 (6) An Internet service provider shall not be criminally  
36 liable for violations of this section by a customer of such  
37 provider if the provider has no knowledge of the criminal actions  
38 of the customer.

39 **SECTION 2.** Section 97-5-35, Mississippi Code of 1972, is  
40 amended as follows:

41 97-5-35. Any person who violates any provision of Section  
42 97-5-33 shall be guilty of a felony and upon conviction shall pay  
43 a fine of not less than Twenty-five Thousand Dollars (\$25,000.00)  
44 nor more than One Hundred Thousand Dollars (\$100,000.00) and shall  
45 be imprisoned for not less than five (5) years nor more than  
46 twenty (20) years. Any person convicted of a second or subsequent  
47 violation of Section 97-5-33 shall pay a fine of not less than  
48 Seventy-five Thousand Dollars (\$75,000.00) and shall be imprisoned  
49 not less than ten (10) years nor more than thirty (30) years.

50 **SECTION 3.** Section 97-19-11, Mississippi Code of 1972, is  
51 amended as follows:

52 97-19-11. Any person who makes or causes to be made either  
53 directly or indirectly any false statement in writing or through  
54 telecommunication devices or computers with intent that it be  
55 relied upon with respect to his identity or that of any other  
56 person, firm or corporation, for the purpose of procuring the  
57 issuance of a credit card is guilty of a misdemeanor.

58 **SECTION 4.** Section 97-19-13, Mississippi Code of 1972, is  
59 amended as follows:

60 97-19-13. A person who takes a credit card from the person,  
61 possession, custody or control of another by acts constituting  
62 statutory larceny, common law larceny by trespassory taking,  
63 common law larceny by trick, embezzlement, false pretense or  
64 extortion, by the use of telecommunication devices or through the



65 Internet or by any other method known to the criminal law of this  
66 state, without the cardholder's consent, or who, with knowledge  
67 that a credit card has been so taken, receives the credit card  
68 with intent to use it or to sell it or to transfer it to a person  
69 other than the issuer or the cardholder or one authorized by him  
70 to receive it is guilty of credit card theft.

71 A person other than the issuer who sells a credit card or a  
72 person who buys a credit card from a person other than the issuer  
73 violates Sections 97-19-5 to 97-19-29.

74 Any person other than the issuer or cardholder or members of  
75 his immediate family who, during any consecutive twelve-month  
76 period, receives two (2) or more credit cards not issued in his  
77 name and which cards he has reason to know were taken or retained  
78 under circumstances which constitute credit card theft under this  
79 section or a violation of Section 97-19-11 is considered to be in  
80 violation of Sections 97-19-5 to 97-19-29.

81 **SECTION 5.** Section 97-19-21, Mississippi Code of 1972, is  
82 amended as follows:

83 97-19-21. (1) It is unlawful for any person, with intent to  
84 defraud the cardholder, the issuer, a person or organization  
85 providing money, goods, property, services or anything else of  
86 value, or any other person, (a) to use a credit card or credit  
87 card number obtained or retained in violation of Sections 97-19-5  
88 to 97-19-29, or a credit card which he knows is forged, for the  
89 purpose of obtaining money, goods, property, services or anything  
90 else of value, or (b) to obtain money, goods, property, services  
91 or anything else of value (i) by representing without the consent  
92 of the cardholder that he is the holder of a specified card, or  
93 (ii) by representing that he is the holder of a card when he has  
94 reason to know that such card has not in fact been issued, or  
95 (iii) by representing that he has been authorized to use the  
96 credit card or credit card number.



97           (2) It is unlawful for any person, with intent to defraud  
98 the cardholder or issuer of a credit card used in the operation of  
99 an automatic unmanned cash dispensing machine, to use such card  
100 for the purpose of obtaining money from such machine.

101           (3) Any person convicted for a violation of subsection (1)  
102 or (2) of this section shall be punished as follows:

103                 (a) For a first offense of violating subsection (1) or  
104 (2) of this section, whenever the value of the money, goods,  
105 property, services or other thing of value obtained or attempted  
106 to be obtained is less than One Hundred Dollars (\$100.00), the  
107 person committing the offense shall be punished by a fine not to  
108 exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the  
109 county jail for a term not to exceed one (1) year, or by both such  
110 fine and imprisonment.

111                 (b) For a second or subsequent offense of violating  
112 subsection (1) or (2) of this section, whenever the value of the  
113 money, goods, property, services or other thing of value obtained  
114 or attempted to be obtained is less than One Hundred Dollars  
115 (\$100.00), the person committing the offense shall be guilty of a  
116 felony and, upon conviction, shall be punished by a fine of not  
117 less than One Hundred Dollars (\$100.00) nor more than One Thousand  
118 Dollars (\$1,000.00), or by imprisonment in the State Penitentiary  
119 for a term not to exceed five (5) years, or by both such fine and  
120 imprisonment.

121                 (c) Whenever the value of the money, goods, property,  
122 services or other thing of value obtained or attempted to be  
123 obtained is One Hundred Dollars (\$100.00) or more, the person  
124 committing the offense, whether the offense is a first, second or  
125 subsequent offense, shall be guilty of a felony and such person,  
126 upon conviction, shall be punished as provided in paragraph (3)(b)  
127 of this section.

128           (4) For the purpose of determining the punishment to be  
129 imposed under subsection (3) of this section, the value of all



130 money, goods, property, services and other things of value  
131 obtained or attempted to be obtained by two (2) or more uses of  
132 the same credit card shall be aggregated.

133 **SECTION 6.** Section 97-19-31, Mississippi Code of 1972, is  
134 amended as follows:

135 97-19-31. (1) It shall be unlawful for any person knowingly  
136 to obtain or attempt to obtain credit, or to purchase or attempt  
137 to purchase any goods, property or service, by the use of any  
138 false, fictitious, counterfeit or expired telephone number, credit  
139 number or other credit device, or by the use of any telephone  
140 number, credit number or other credit device of another without  
141 the authority of the person to whom such number or device was  
142 issued, or by the use of any telephone number, credit number,  
143 Internet account number or other credit device in any case where  
144 such number or device has been revoked and notice of revocation  
145 has been given to the person to whom issued.

146 (2) It shall be unlawful for any person to use or to assist  
147 another to use a credit number or other credit device in  
148 connection with any fraudulent scheme, means or method with intent  
149 to defraud the issuer of such credit number or other credit  
150 device.

151 (3) It shall be unlawful for any person to obtain or attempt  
152 to obtain by the use of any false or fraudulent scheme, device,  
153 means or method, telephone or telegraph service or the  
154 transmission of a message, signal or other communication by  
155 telephone or telegraph, or over telephone or telegraph facilities.

156 (4) The word "notice" as used in subsection (1) of this  
157 section shall be construed to include either notice given in  
158 person or notice given in writing to the person to whom the number  
159 or device was issued. The sending of a notice in writing  
160 personally signed by the issuer or his duly authorized agent or  
161 employee by registered or certified mail in the United States  
162 mail, duly stamped and addressed to such person at his last



163 address known to the issuer, shall be prima facie evidence that  
164 such notice was duly received.

165 (5) Any person who violates any provision of subsections  
166 (1), (2) or (3) of this section is guilty of a misdemeanor and  
167 upon conviction shall be punished by a fine of not less than Fifty  
168 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or  
169 imprisonment for not more than one (1) year, or by both such fine  
170 and imprisonment.

171 **SECTION 7.** This act shall take effect and be in force from  
172 and after July 1, 2002.

