

By: Senator(s) Fillingane, England

To: Judiciary, Division B

SENATE BILL NO. 2121
(As Sent to Governor)

1 AN ACT TO CRIMINALIZE THE DISCLOSURE WITHOUT CONSENT OF
2 INTIMATE VISUAL MATERIAL; TO DEFINE TERMS; TO PROVIDE PENALTIES
3 FOR THE CRIME; TO ENUMERATE CERTAIN DEFENSES; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** As used in this section:

7 (a) "Intimate parts" means the naked genitals, pubic
8 area, anus, buttocks or female nipple of a person.

9 (b) "Promote" means to procure, manufacture, issue,
10 sell, give, provide, lend, mail, deliver, transfer, transmit,
11 publish, distribute, circulate, disseminate, present, exhibit or
12 advertise or to offer or agree to promote.

13 (c) "Sexual conduct" means sexual contact, actual or
14 simulated sexual intercourse, deviate sexual intercourse, sexual
15 bestiality, masturbation or sadomasochistic abuse.

16 (d) "Simulated" means the explicit depiction of sexual
17 conduct that creates the appearance of actual sexual conduct and
18 during which a person engaging in the conduct exhibits any
19 uncovered portion of the genitals, buttocks or female nipple.



20 (e) "Visual material" means:

21 (i) Any film, photograph, videotape, negative or
22 slide or any photographic reproduction that contains or
23 incorporates in any manner any film, photograph, videotape,
24 negative or slide; or

25 (ii) Any disk, diskette or other physical medium
26 that allows an image to be displayed on a computer or other video
27 screen and any image transmitted to a computer or other video
28 screen by telephone line, cable, satellite transmission, or other
29 method.

30 **SECTION 2.** (1) A person commits an offense if:

31 (a) Without the effective consent of the depicted
32 person and with the intent to harm the depicted person, the
33 offender discloses visual material depicting another person with
34 the depicted person's intimate parts exposed or engaged in sexual
35 conduct;

36 (b) At the time of the disclosure, the offender knows
37 or has reason to believe that the visual material was obtained by
38 the offender or created under circumstances in which the depicted
39 person had a reasonable expectation that the visual material would
40 remain private;

41 (c) The disclosure of the visual material causes harm
42 to the depicted person; and

43 (d) The disclosure of the visual material reveals the
44 identity of the depicted person in any manner, including through:



45 (i) Any accompanying or subsequent information or
46 material related to the visual material; or

47 (ii) Information or material provided by a third
48 party in response to the disclosure of the visual material.

49 (2) A person commits an offense if the offender
50 intentionally threatens to disclose, without the consent of the
51 depicted person, visual material depicting another person with the
52 depicted person's intimate parts exposed or engaged in sexual
53 conduct and the offender makes the threat to obtain a benefit:

54 (a) In return for not making the disclosure; or

55 (b) In connection with the threatened disclosure.

56 (3) A person commits an offense if, knowing the character
57 and content of the visual material, the offender promotes visual
58 material described by subsection (1) of this section on an
59 internet website or other forum for publication that is owned or
60 operated by the offender.

61 (4) It is not a defense to prosecution under this section
62 that the depicted person:

63 (a) Created or consented to the creation of the visual
64 material; or

65 (b) Voluntarily transmitted the visual material to the
66 actor.

67 (5) It is an affirmative defense to prosecution under
68 subsection (1) or (3) of this section that:



69 (a) The disclosure or promotion is made in the course
70 of:

71 (i) Lawful and common practices of law enforcement
72 or medical treatment;

73 (ii) Reporting unlawful activity; or

74 (iii) A legal proceeding, if the disclosure or
75 promotion is permitted or required by law; or

76 (b) The disclosure or promotion consists of visual
77 material depicting in a public or commercial setting only a
78 person's voluntary exposure of:

79 (i) The person's intimate parts; or

80 (ii) The person engaging in sexual conduct.

81 (6) Where content is provided by another person or entity,
82 nothing in this act shall be construed to impose criminal
83 liability on the following:

84 (a) An internet service provider;

85 (b) an interactive computer service, as defined in 47
86 USC Section 230;

87 (c) A provider of an electronic communications service,
88 as defined in 18 USC Section 2510;

89 (d) A telecommunications service, information service
90 or mobile service, as defined in 47 USC Section 153, including a
91 commercial mobile service, as defined in 47 USC Section 332(d); or

92 (e) A cable operator, as defined in 47 USC Section 522.



93 (7) (a) A first offense under this section is a misdemeanor
94 and, upon conviction, shall be punished by imprisonment in the
95 county jail not exceeding six (6) months or by a fine not
96 exceeding One Thousand Dollars (\$1,000.00), or both.

97 (b) A second or subsequent violation of this section is
98 a felony and, upon conviction, shall be punished by imprisonment
99 not exceeding one (1) year or by a fine not exceeding Two Thousand
100 Dollars (\$2,000.00), or both.

101 (c) Notwithstanding paragraphs (a) and (b) of this
102 subsection, any offense under this section committed for financial
103 profit shall constitute a felony and, upon conviction, shall be
104 punished by imprisonment not exceeding one (1) year or by fine not
105 exceeding Two Thousand Dollars (\$2,000.00), or both.

106 (8) A person shall be subject to prosecution in this state
107 for any conduct made unlawful by this section which the person
108 engages in while:

109 (a) Either within or outside of this state if, by such
110 conduct, the person commits a violation of this section which
111 involves an individual who resides in this state; or

112 (b) Within this state if, by such conduct, the person
113 commits a violation of this section which involves an individual
114 who resides within or outside this state.

115 (9) The provisions of this section are supplementary to the
116 provisions of any other statute of this state. If conduct that
117 constitutes an offense under this section also constitutes an



118 offense under another law, the actor may be prosecuted under this
119 section, the other law, or both.

120 **SECTION 3.** This act shall take effect and be in force from
121 and after July 1, 2021.

