

By: Representatives Ford (73rd), Nelson,  
Byrd

To: Technology; Judiciary B

HOUSE BILL NO. 1126  
(As Passed the House)

1 AN ACT TO CREATE THE "WALKER MONTGOMERY PROTECTING CHILDREN  
2 ONLINE ACT" FOR THE PURPOSE OF PROTECTING MINOR CHILDREN FROM  
3 ONLINE HARMFUL MATERIAL AND ACCESS TO SUCH MATERIAL; TO REQUIRE  
4 DIGITAL SERVICE USERS TO REGISTER THEIR AGE; TO LIMIT THE  
5 COLLECTION AND USE OF MINOR USERS' PERSONAL IDENTIFYING  
6 INFORMATION; TO REQUIRE DIGITAL SERVICE PROVIDERS TO IMPLEMENT  
7 SAFETY STRATEGIES TO PREVENT MINOR USERS' EXPOSURE TO HARMFUL  
8 MATERIAL; TO AMEND SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO  
9 PROVIDE THAT A VIOLATION OF THIS ACT IS AN UNFAIR AND DECEPTIVE  
10 TRADE PRACTICE THAT IS ENFORCEABLE BY THE OFFICE OF THE ATTORNEY  
11 GENERAL; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO  
12 INCLUDE MORPHED IMAGES OF DEPICTING MINOR CHILDREN IN EXPLICIT  
13 NATURE IN THE CRIME OF CHILD EXPLOITATION; AND FOR RELATED  
14 PURPOSES.

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

16 **SECTION 1.** This act shall be known and may be cited as the  
17 "Walker Montgomery Protecting Children Online Act."

18 **SECTION 2.** For purposes of this act, the following words  
19 shall have the meanings ascribed herein unless the context clearly  
20 requires otherwise:

21 (a) "Digital service" means a website, an application,  
22 a program, or software that collects or processes personal  
23 identifying information with Internet connectivity.

24 (b) "Digital service provider" means a person who:



25 (i) Owns or operates a digital service;  
26 (ii) Determines the purpose of collecting and  
27 processing the personal identifying information of users of the  
28 digital service; and

29 (iii) Determines the means used to collect and  
30 process the personal identifying information of users of the  
31 digital service.

32 (c) "Harmful material" means material that is harmful  
33 to minors as defined by Section 11-77-3(d).

34 (d) "Known minor" means a child who is younger than  
35 eighteen (18) years of age who has not had the disabilities of  
36 minority removed for general purposes, and who the digital service  
37 provider knows to be a minor.

38 (e) "Personal identifying information" means any  
39 information, including sensitive information, that is linked or  
40 reasonably linkable to an identified or identifiable individual.  
41 The term includes pseudonymous information when the information is  
42 used by a controller or processor in conjunction with additional  
43 information that reasonably links the information to an identified  
44 or identifiable individual. The term does not include  
45 deidentified information or publicly available information.

46 **SECTION 3.** (1) This act applies only to a digital service  
47 provider who provides a digital service that:

48 (a) Connects users in a manner that allows users to  
49 socially interact with other users on the digital service;



50 (b) Allows a user to create a public, semi-public or  
51 private profile for purposes of signing into and using the digital  
52 service; and

53 (c) Allows a user to create or post content that can be  
54 viewed by other users of the digital service, including sharing  
55 content on:

56 (i) A message board;

57 (ii) A chat room; or

58 (iii) A landing page, video channel or main feed  
59 that presents to a user content created and posted by other users.

60 (2) This act does not apply to:

61 (a) A digital service provider who processes or  
62 maintains user data in connection with the employment, promotion,  
63 reassignment or retention of the user as an employee or  
64 independent contractor, to the extent that the user's data is  
65 processed or maintained for that purpose;

66 (b) A digital service provider's provision of a digital  
67 service that facilitates e-mail or direct messaging services, if  
68 the digital service facilitates only those services; or

69 (c) A digital service provider's provision of a digital  
70 service that:

71 (i) Primarily functions to provide a user with  
72 access to news, sports, commerce or content primarily generated or  
73 selected by the digital service provider; and



74 (ii) Allows chat, comment or other interactive  
75 functionality that is incidental to the digital service.

76 (3) The Internet service provider, Internet service  
77 provider's affiliate or subsidiary, search engine or cloud service  
78 provider is not considered to be a digital service provider or to  
79 offer a digital service if the Internet service provider or  
80 provider's affiliate or subsidiary, search engine or cloud service  
81 provider solely provides access or connection, including through  
82 transmission, download, intermediate storage, access software or  
83 other service, to an Internet website or to other information or  
84 content:

85 (a) On the Internet; or

86 (b) On a facility, system or network not under the  
87 control of the Internet service provider, provider's affiliate or  
88 subsidiary, search engine or cloud service provider.

89 **SECTION 4.** (1) A digital service provider may not enter  
90 into an agreement with a person to create an account with a  
91 digital service unless the person has registered the person's age  
92 with the digital service provider. A digital service provider  
93 shall make commercially reasonable efforts to verify the age of  
94 the person creating an account with a level of certainty  
95 appropriate to the risks that arise from the information  
96 management practices of the digital service provider.

97 (2) A digital service provider shall not permit an account  
98 holder who is a known minor to be an account holder unless the



99 known minor has the express consent from a parent or guardian.  
100 Acceptable methods of obtaining express consent of a parent or  
101 guardian include any of the following:

102 (a) Providing a form for the minor's parent or guardian  
103 to sign and return to the digital service provider by common  
104 carrier, facsimile, or electronic scan;

105 (b) Providing a toll-free telephone number for the  
106 known minor's parent or guardian to call to consent;

107 (c) Coordinating a call with a known minor's parent or  
108 guardian over video conferencing technology;

109 (d) Collecting information related to the  
110 government-issued identification of the known minor's parent or  
111 guardian and deleting that information after confirming the  
112 identity of the known minor's parent or guardian;

113 (e) Allowing the known minor's parent or guardian to  
114 provide consent by responding to an email and taking additional  
115 steps to verify the identity of the known minor's parent or  
116 guardian; or

117 (f) Any other commercially reasonable method of  
118 obtaining consent in light of available technology.

119 **SECTION 5.** (1) A digital service provider that enters into  
120 an agreement with a known minor for access to a digital service  
121 shall:



122 (a) Limit collection of the known minor's personal  
123 identifying information to information reasonably necessary to  
124 provide the digital service; and

125 (b) Limit use of the known minor's personal identifying  
126 information to the purpose for which the information was  
127 collected.

128 (2) A digital service provider that enters into an agreement  
129 with a known minor for access to a digital service may not:

130 (a) Use the digital service to collect the known  
131 minor's precise geolocation data;

132 (b) Use the digital service to display targeted  
133 advertising involving harmful material to the known minor; or

134 (c) Share, disclose or sell the known minor's personal  
135 identifying information unless required to:

136 (i) Comply with a civil, criminal or regulatory  
137 inquiry, investigation, subpoena or summons by a governmental  
138 entity;

139 (ii) Comply with a law enforcement investigation;

140 (iii) Detect, block or prevent the distribution of  
141 unlawful, obscene or other harmful material to a known minor;

142 (iv) Block or filter spam;

143 (v) Prevent criminal activity; or

144 (vi) Protect the security of a digital service.

145 **SECTION 6.** In relation to a known minor's use of a digital  
146 service, a digital service provider shall develop and implement a



147 strategy to prevent the known minor's exposure to harmful material  
148 and other content that promotes, glorifies or facilitates:

- 149 (a) Suicide, self-harm or eating disorders;
- 150 (b) Substance abuse or use of illegal drugs;
- 151 (c) Stalking, bullying or harassment;
- 152 (d) Grooming, trafficking, child pornography or other  
153 sexual exploitation or abuse;
- 154 (e) Incitement of violence; or
- 155 (f) Any other illegal activity.

156 **SECTION 7.** (1) Except as provided by subsection (2) of this  
157 section, this act may not be construed as providing a basis for,  
158 or being subject to, a private right of action for a violation of  
159 this act.

160 (2) If a digital service provider violates this act, the  
161 parent or guardian of a known minor affected by that violation may  
162 bring a cause of action seeking:

- 163 (a) A declaratory judgment under Rule 57 of Mississippi  
164 Rules of Civil Procedure; or
- 165 (b) An injunction against the digital service provider.

166 (3) A court may not certify an action brought under this  
167 section as a class action.

168 **SECTION 8.** Section 75-24-5, Mississippi Code of 1972, is  
169 amended as follows:

170 75-24-5. (1) Unfair methods of competition affecting  
171 commerce and unfair or deceptive trade practices in or affecting



172 commerce are prohibited. Action may be brought under Section  
173 75-24-5(1) only under the provisions of Section 75-24-9.

174 (2) Without limiting the scope of subsection (1) of this  
175 section, the following unfair methods of competition and unfair or  
176 deceptive trade practices or acts in the conduct of any trade or  
177 commerce are hereby prohibited:

178 (a) Passing off goods or services as those of another;

179 (b) Misrepresentation of the source, sponsorship,  
180 approval, or certification of goods or services;

181 (c) Misrepresentation of affiliation, connection, or  
182 association with, or certification by another;

183 (d) Misrepresentation of designations of geographic  
184 origin in connection with goods or services;

185 (e) Representing that goods or services have  
186 sponsorship, approval, characteristics, ingredients, uses,  
187 benefits, or quantities that they do not have or that a person has  
188 a sponsorship, approval, status, affiliation, or connection that  
189 he does not have;

190 (f) Representing that goods are original or new if they  
191 are reconditioned, reclaimed, used, or secondhand;

192 (g) Representing that goods or services are of a  
193 particular standard, quality, or grade, or that goods are of a  
194 particular style or model, if they are of another;

195 (h) Disparaging the goods, services, or business of  
196 another by false or misleading representation of fact;





197 (i) Advertising goods or services with intent not to  
198 sell them as advertised;

199 (j) Advertising goods or services with intent not to  
200 supply reasonably expectable public demand, unless the  
201 advertisement discloses a limitation of quantity;

202 (k) Misrepresentations of fact concerning the reasons  
203 for, existence of, or amounts of price reductions;

204 (l) Advertising by or on behalf of any licensed or  
205 regulated health care professional which does not specifically  
206 describe the license or qualifications of the licensed or  
207 regulated health care professional;

208 (m) Charging an increased premium for reinstating a  
209 motor vehicle insurance policy that was cancelled or suspended by  
210 the insured solely for the reason that he was transferred out of  
211 this state while serving in the United States Armed Forces or on  
212 active duty in the National Guard or United States Armed Forces  
213 Reserve. It is also an unfair practice for an insurer to charge  
214 an increased premium for a new motor vehicle insurance policy if  
215 the applicant for coverage or his covered dependents were  
216 previously insured with a different insurer and canceled that  
217 policy solely for the reason that he was transferred out of this  
218 state while serving in the United States Armed Forces or on active  
219 duty in the National Guard or United States Armed Forces Reserve.  
220 For purposes of determining premiums, an insurer shall consider  
221 such persons as having maintained continuous coverage. The



222 provisions of this paragraph (m) shall apply only to such  
223 instances when the insured does not drive the vehicle during the  
224 period of cancellation or suspension of his policy;

225 (n) Violating the provisions of Section 75-24-8; \* \* \*

226 (o) Violating the provisions of Section 73-3-38 \* \* \*;

227 and

228 (p) Violating provisions of Section 1 through 7 of this  
229 act.

230 **SECTION 9.** Section 97-5-31, Mississippi Code of 1972, is  
231 amended as follows:

232 97-5-31. As used in Sections 97-5-33 through 97-5-37, the  
233 following words and phrases shall have the meanings given to them  
234 in this section:

235 (a) "Child" means any individual who has not attained  
236 the age of eighteen (18) years and is an identifiable child.

237 (b) "Sexually explicit conduct" means actual, morphed  
238 or simulated:

239 (i) Oral genital contact, oral anal contact, or  
240 sexual intercourse as defined in Section 97-3-65, whether between  
241 persons of the same or opposite sex;

242 (ii) Bestiality;

243 (iii) Masturbation;

244 (iv) Sadistic or masochistic abuse;

245 (v) Lascivious exhibition of the genitals or pubic  
246 area of any person; or



247 (vi) Fondling or other erotic touching of the  
248 genitals, pubic area, buttocks, anus or breast.

249 (c) "Producing" means producing, directing,  
250 manufacturing, issuing, publishing, morphing or advertising.

251 (d) "Visual depiction" includes, without limitation,  
252 developed or undeveloped film and video tape or other visual  
253 unaltered, altered or morphed reproductions by computer and  
254 technology.

255 (e) "Computer" has the meaning given in Title 18,  
256 United States Code, Section 1030.

257 (f) "Morphed image" means any visual depiction or  
258 representation, including any photograph, film, video, picture, or  
259 computer or computer-generated image or picture, whether made or  
260 produced by electronic, mechanical, simulated or other means, of  
261 sexually explicit conduct, where such visual depiction or  
262 representation has been created, adapted, or modified to appear an  
263 identifiable minor is engaging in sexual conduct or sexually  
264 explicit activity to appearing in a state of sexually explicit  
265 nudity.

266 ( \* \* \*g) "Simulated" means any depicting of the  
267 genitals or rectal areas that gives the appearance of sexual  
268 conduct or incipient sexual conduct.

269 (h) "Identifiable child" means a child who was a minor  
270 at the time the image was created, adapted, or modified or whose  
271 image as a child was used in the creating, adapting or modifying



272 of the image; and is recognizable as an actual child by the  
273 child's face, likeness, or other distinguishing characteristic,  
274 such as a unique birthmark or other recognizable feature. The  
275 provisions of this paragraph (g) shall not be construed to require  
276 proof of the actual identity of the identifiable child.

277         **SECTION 10.** This act shall take effect and be in force from  
278 and after July 1, 2024.

