MISSISSIPPI LEGISLATURE

By: Representative Mims

REGULAR SESSION 2014

To: Judiciary A

HOUSE BILL NO. 1

AN ACT TO AMEND SECTION 97-5-27, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR DISSEMINATION OF SEXUALLY ORIENTED MATERIAL TO A MINOR; AND FOR RELATED PURPOSES.

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

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

97-5-27. (1) Any person who intentionally and knowingly disseminates sexually oriented material to any person under eighteen (18) years of age shall be guilty of a felony and, upon conviction, shall be fined for each offense not less than $1,000.00 nor more than $5,000.00 or be imprisoned for not less than one (1) year nor more than five years in the custody of the Department of Corrections, or be punished by both such fine and imprisonment. A person disseminates sexually oriented material within the meaning of this section if he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any sexually oriented writing, picture,
image on an electronic device, record or other representation or embodiment that is sexually oriented; or

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

(c) Exhibits, presents, rents, sells, delivers or provides, or offers or agrees to exhibit, present, rent or to provide any sexually oriented still or motion picture, film, filmstrip or projection slide, or sound recording, sound tape or sound track, image on an electronic device or any matter or material of whatever form which is a representation, embodiment, performance or publication that is sexually oriented.

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

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

(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output,
examination or transfer of computer data or computer programs from
one (1) computer to another, to initiate or engage in such
communication with a person under the age of eighteen (18); and

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

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

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

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

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

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

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

(d) In any prosecution for computer luring:

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

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

(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with

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

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

(4) Investigation and prosecution of a defendant under this
section does not preclude prosecution of the defendant for a
violation of other applicable criminal laws, including, but not
limited to, the Mississippi Human Trafficking Act, Section 97-3-54
et seq.

SECTION 2. This act shall take effect and be in force from
and after July 1, 2014.