

By: Representative Mims

To: Judiciary A

HOUSE BILL NO. 1

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

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

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

7 97-5-27. (1) Any person who intentionally and knowingly  
8 disseminates sexually oriented material to any person under  
9 eighteen (18) years of age shall be guilty of a \* \* \* felony and,  
10 upon conviction, shall be fined for each offense not less  
11 than \* \* \* One Thousand Dollars (\$1,000.00) nor more than Five  
12 Thousand Dollars (\$5,000.00) or be imprisoned for not less than  
13 one (1) year nor more than \* \* \* five years in the \* \* \* custody  
14 of the Department of Corrections, or be punished by both such fine  
15 and imprisonment. A person disseminates sexually oriented  
16 material within the meaning 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 image on an electronic device, record or other representation or  
20 embodiment that is sexually 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, image on an electronic device or any matter or  
29 material of whatever form which is a representation, embodiment,  
30 performance or publication that is 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 (1) 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 (4) Investigation and prosecution of a defendant under this  
105 section does not preclude prosecution of the defendant for a  
106 violation of other applicable criminal laws, including, but not  
107 limited to, the Mississippi Human Trafficking Act, Section 97-3-54  
108 et seq.

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

