

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2617

1 AN ACT TO PROHIBIT UNLAWFUL DISCLOSURE OR PROMOTION OF  
 2 INTIMATE VISUAL MATERIAL; TO CREATE NEW SECTION 95-17-1,  
 3 MISSISSIPPI CODE OF 1972, TO PROVIDE DEFINITIONS; TO CREATE NEW  
 4 SECTION 95-17-3, MISSISSIPPI CODE OF 1972, TO PROVIDE LIABILITY  
 5 FOR UNLAWFUL DISCLOSURE OR PROMOTION OF CERTAIN VISUAL MATERIAL;  
 6 TO CREATE NEW SECTION 95-17-5, MISSISSIPPI CODE OF 1972, TO  
 7 PROVIDE FOR DAMAGES; TO CREATE NEW SECTION 95-17-7, MISSISSIPPI  
 8 CODE OF 1972, TO PROVIDE FOR INJUNCTIVE RELIEF; TO CREATE NEW  
 9 SECTION 95-17-9, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CAUSE  
 10 OF ACTION UNDER THIS ACT IS CUMULATIVE; TO CREATE NEW SECTION  
 11 95-17-11, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR JURISDICTION;  
 12 TO CREATE NEW SECTION 95-17-13, MISSISSIPPI CODE OF 1972, TO  
 13 PROVIDE EXCEPTIONS; TO CREATE NEW SECTION 97-29-67, MISSISSIPPI  
 14 CODE OF 1972, TO CREATE THE CRIME OF UNLAWFUL DISCLOSURE OR  
 15 PROMOTION OF INTIMATE VISUAL MATERIAL, AND TO ENACT DEFINITIONS  
 16 AND PENALTIES; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** The following shall be codified as Section  
 19 95-17-1, Mississippi Code of 1972:

20 95-17-1. In this chapter:

21 (a) "Intimate parts," "promote," "sexual conduct," and  
 22 "visual material" have the meanings given in Section 8 of this  
 23 act.

24 (b) "Intimate visual material" means visual material  
 25 that depicts a person:



- 26 (i) With the person's intimate parts exposed; or  
27 (ii) Engaged in sexual conduct.

28 **SECTION 2.** The following shall be codified as Section  
29 95-17-3, Mississippi Code of 1972:

30 95-17-3. (1) A defendant is liable, to a person depicted in  
31 intimate visual material, for damages arising from the disclosure  
32 of the material if:

33 (a) The defendant discloses the intimate visual  
34 material without the effective consent of the depicted person;

35 (b) The intimate visual material was obtained by the  
36 defendant or created under circumstances in which the depicted  
37 person had a reasonable expectation that the material would remain  
38 private;

39 (c) The disclosure of the intimate visual material  
40 causes harm to the depicted person; and

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

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

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

49 (2) A defendant is liable, to a person depicted in intimate  
50 visual material, for damages arising from the promotion of the



51 material if, knowing the character and content of the material,  
52 the defendant promotes intimate visual material described by  
53 subsection (1) of this section on an Internet website or other  
54 forum for publication that is owned or operated by the defendant.

55 **SECTION 3.** The following shall be codified as Section  
56 95-17-5, Mississippi Code of 1972:

57 95-17-5. (1) A claimant who prevails in a suit under this  
58 chapter shall be awarded:

59 (a) Actual damages, including damages for mental  
60 anguish;

61 (b) Court costs; and

62 (c) Reasonable attorney's fees.

63 (2) In addition to an award under subsection (1), a claimant  
64 who prevails in a suit under this chapter may recover exemplary  
65 damages.

66 **SECTION 4.** The following shall be codified as Section  
67 95-17-7, Mississippi Code of 1972:

68 95-17-7. (1) A court in which a suit is brought under this  
69 chapter, on the motion of a party, may issue a temporary  
70 restraining order or a temporary or permanent injunction to  
71 restrain and prevent the disclosure or promotion of intimate  
72 visual material with respect to the person depicted in the  
73 material.

74 (2) A court that issues a temporary restraining order or a  
75 temporary or permanent injunction under subsection (1) of this



76 section may award to the party who brought the motion damages in  
77 the amount of:

78 (a) One Thousand Dollars (\$1,000.00) for each violation  
79 of the court's order or injunction, if the disclosure or promotion  
80 of intimate visual material is willful or intentional; or

81 (b) Five Hundred Dollars (\$500.00) for each violation  
82 of the court's order or injunction, if the disclosure or promotion  
83 of intimate visual material is not willful or intentional.

84 **SECTION 5.** The following shall be codified as Section  
85 95-17-9, Mississippi Code of 1972:

86 95-17-9. The cause of action created by this chapter is  
87 cumulative and in addition to any other remedy available at common  
88 law or by statute.

89 **SECTION 6.** The following shall be codified as Section  
90 95-17-11, Mississippi Code of 1972:

91 95-17-11. A court has personal jurisdiction over a defendant  
92 in a suit brought under this chapter if:

93 (a) The defendant resides in this state;

94 (b) The claimant who is depicted in the intimate visual  
95 material resides in this state;

96 (c) The intimate visual material is stored on a server  
97 that is located in this state; or

98 (e) The intimate visual material is available for view  
99 in this state.



100           **SECTION 7.** The following shall be codified as Section  
101 95-17-13, Mississippi Code of 1972:

102           95-17-13. (1) This chapter shall be liberally construed and  
103 applied to promote its underlying purpose to protect persons from,  
104 and provide adequate remedies to victims of, the disclosure or  
105 promotion of intimate visual material.

106           (2) This chapter does not apply to a claim brought against  
107 an interactive computer service, as defined by 47 USC Section 230,  
108 for a disclosure or promotion consisting of intimate visual  
109 material provided by another person.

110           **SECTION 8.** The following shall be codified as Section  
111 97-29-67, Mississippi Code of 1972:

112           97-29-67. (1) In this section:

113           (a) "Intimate parts" means the female nipple or the  
114 naked genitals, pubic area, anus or buttocks.

115           (b) "Promote" means to do, or offer or agree to do, any  
116 of the following: procure, manufacture, issue, sell, give,  
117 provide, lend, mail, deliver, transfer, transmit, publish,  
118 distribute, circulate, disseminate, present, exhibit or advertise.

119           (c) "Sexual conduct" means sexual contact, actual or  
120 simulated sexual intercourse, deviate sexual intercourse, sexual  
121 bestiality, masturbation or sadomasochistic abuse.

122           (d) "Simulated" means the explicit depiction of sexual  
123 conduct that creates the appearance of actual sexual conduct and



124 during which a person engaging in the conduct exhibits any  
125 uncovered portion of the breasts, genitals, or buttocks.

126 (e) "Visual material" means:

127 (i) Any film, photograph, videotape, negative, or  
128 slide or any photographic reproduction that contains or  
129 incorporates in any manner any film, photograph, videotape,  
130 negative or slide; or

131 (ii) Any physical medium that allows an image to  
132 be displayed on a computer or other video screen and any image  
133 transmitted to a computer or other video screen by telephone line,  
134 cable, satellite transmission or other method.

135 (2) A person commits an offense if:

136 (a) Without the effective consent of the depicted  
137 person, the person intentionally discloses visual material  
138 depicting another person with the person's intimate parts exposed  
139 or engaged in sexual conduct;

140 (b) The visual material was obtained by the person or  
141 created under circumstances in which the depicted person had a  
142 reasonable expectation that the visual material would remain  
143 private;

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

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



148 (i) Any accompanying or subsequent information or  
149 material related to the visual material; or

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

152 (3) A person commits an offense if the person intentionally  
153 threatens to disclose, without the consent of the depicted person,  
154 visual material depicting another person with the person's  
155 intimate parts exposed or engaged in sexual conduct and the person  
156 makes the threat to obtain a benefit:

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

158 (b) In connection with the threatened disclosure.

159 (4) A person commits an offense if, knowing the character  
160 and content of the visual material, the person promotes visual  
161 material described by subsection (2) of this section on an  
162 Internet website or other forum for publication that is owned or  
163 operated by the person.

164 (5) It is not a defense to prosecution under this section  
165 that the depicted person:

166 (a) Created or consented to the creation of the visual  
167 material; or

168 (b) Voluntarily transmitted the visual material to the  
169 defendant.

170 (6) It is an affirmative defense to prosecution under  
171 subsection (1) or (2) of this section that:



172 (a) The disclosure or promotion is made in the course  
173 of:

174 (i) Lawful and common practices of law enforcement  
175 or medical treatment;

176 (ii) Reporting unlawful activity; or

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

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

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

183 (ii) The person engaging in sexual conduct; or

184 (iii) The actor is an interactive computer  
185 service, as defined by 47 USC Section 230, and the disclosure or  
186 promotion consists of visual material provided by another person.

187 (7) A person found guilty of a violation of this section  
188 shall be punished by a fine not to exceed Four Thousand Dollars  
189 (\$4,000.00), confinement in jail for a term not to exceed one (1)  
190 year, or both.

191 (8) If conduct that constitutes an offense under this  
192 section also constitutes an offense under another law, the actor  
193 may be prosecuted under this section, the other law, or both.

194 **SECTION 9.** This act shall take effect and be in force from  
195 and after July 1, 2018.

