

2015 Regular Session

HOUSE BILL NO. 153

BY REPRESENTATIVES TIM BURNS, BROWN, CARMODY, CARTER, CHANEY, COX, FOIL, GAROFALO, GISCLAIR, HARRISON, HAZEL, HENRY, HOFFMANN, MIKE JOHNSON, LEOPOLD, LORUSSO, ORTEGO, PEARSON, REYNOLDS, SCHRODER, SEABAUGH, ST. GERMAIN, AND STOKES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIME: Creates the crime of unlawful distribution of material harmful to minors through the Internet

1 AN ACT

2 To enact R.S. 14:91.14, relative to offenses affecting the health and morals of minors; to  
3 create the crime of unlawful distribution of material harmful to minors through the  
4 Internet; to provide elements for and exceptions to the offense; to provide for  
5 definitions; to provide for criminal penalties; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:91.14 is hereby enacted to read as follows:

8 §91.14. Unlawful distribution of material harmful to minors through the Internet

9 A.(1) Any person or entity in Louisiana that publishes material harmful to  
10 minors on the Internet shall, prior to permitting access to the material, require any  
11 person attempting to access the material to electronically acknowledge and attest that  
12 the person seeking to access the material is eighteen years of age or older.

13 (2) The failure to comply with the provisions of Paragraph (1) of this  
14 Subsection shall constitute the unlawful distribution of material harmful to minors  
15 through the Internet.

16 (3) If a person or entity in Louisiana publishes material harmful to minors  
17 on the Internet and complies with the provisions of Paragraph (1) of this Subsection,  
18 the person or entity shall not be held liable under the provisions of this Section if the

1 person seeking to access the material is under the age of eighteen and falsely  
2 acknowledges and attests that he is eighteen years of age or older.

3 (4) No Internet service provider, interactive computer service provider as  
4 defined by 47 U.S.C. 230(f), or radio or television broadcast licensee of the Federal  
5 Communications Commission shall be deemed to be a publisher or distributor of  
6 material harmful to minors that is provided by another person.

7 (5) This Section shall not apply to any bona fide news or public interest  
8 broadcast, website, video, report, or event and shall not be construed to affect the  
9 rights of any news-gathering organization.

10 B. For purposes of this Section:

11 (1) "Descriptions or depictions of illicit sex or sexual immorality" includes  
12 the depiction, display, description, exhibition, or representation of any of the  
13 following:

14 (a) Ultimate sexual acts, normal or perverted, actual, simulated, or animated,  
15 whether between human beings, animals, or an animal and a human being.

16 (b) Masturbation, excretory functions, or exhibition, actual, simulated, or  
17 animated, of the genitals, pubic hair, anus, vulva, or female breast nipples.

18 (c) Sadoomasochistic abuse, meaning actual, simulated, or animated,  
19 flagellation or torture by or upon a person who is nude or clad in undergarments or  
20 in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast  
21 nipples, or the condition of being fettered, bound, or otherwise physically restrained,  
22 on the part of one so clothed.

23 (d) Actual, simulated, or animated, touching, caressing, or fondling of, or  
24 other similar physical contact with, a pubic area, anus, female breast nipple, covered  
25 or exposed, whether alone or between human, animals, or a human and an animal,  
26 of the same or opposite sex, in an act of apparent sexual stimulation or gratification.

27 (e) Actual, simulated, or animated, stimulation of the human genital organs  
28 by any device whether or not the device is designed, manufactured, and marketed for  
29 that purpose.

1           (2) "Material harmful to minors" is defined as any digital image, photograph,  
2           or video which exploits, is devoted to or principally consists of, descriptions or  
3           depictions of illicit sex or sexual immorality for commercial gain, and when the trier  
4           of fact determines that each of the following applies:

5                   (a) The material incites or appeals to or is designed to incite or appeal to the  
6                   prurient, shameful, or morbid interest of minors.

7                   (b) The material is offensive to the average adult applying contemporary  
8                   community standards with respect to what is suitable for minors.

9                   (c) The material taken as a whole lacks serious literary, artistic, political, or  
10                  scientific value for minors.

11                  (3) "News-gathering organization" means all of the following:

12                   (a) A newspaper, or news publication, printed or electronic, of current news  
13                   and intelligence of varied, broad, and general public interest, having been published  
14                   for a minimum of one year and that can provide documentation of membership in a  
15                   statewide or national press association, as represented by an employee thereof who  
16                   can provide documentation of his employment with the newspaper, wire service, or  
17                   news publication.

18                   (b) A radio broadcast station, television broadcast station, cable television  
19                   operator, or wire service as represented by an employee thereof who can provide  
20                   documentation of his employment.

21                  C. Whoever violates the provisions of this Section shall be fined up to ten  
22                  thousand dollars.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 153 Reengrossed

2015 Regular Session

Tim Burns

**Abstract:** Creates the crime of unlawful distribution of material harmful to minors through the Internet, provides criminal penalties including a fine of up to \$10,000, and provides for exceptions.

Proposed law creates the crime of unlawful distribution of material harmful to minors through the Internet, providing that any person or entity in La. that publishes material harmful to minors on the Internet shall, prior to permitting access to such material, require any person attempting to access such material to acknowledge that the person is 18 years of age or older.

Proposed law provides that if the person seeking to access such material is under the age of 18 and falsely acknowledges that he is 18 years of age or older, the person or entity in La. that publishes material harmful to minors on the Internet and who complies with the requirements set forth in proposed law shall not be held liable for this offense.

Proposed law provides exceptions for the following:

- (1) Internet service provider, interactive computer service provider as defined by federal law (47 U.S.C. 230(f)), or radio or television broadcast licensee of the Federal Communications Commission for material harmful to minors that is provided by another person.
- (2) Material that is a bona fide news or public interest broadcast, website, video, report, or event.

Provides that the provisions of proposed law do not affect the rights of any news-gathering organization.

Proposed law provides for definitions of "descriptions or depictions of illicit sex or sexual immorality", "material harmful to minors", and "news-gathering organization".

Provides that whoever violates the provisions of proposed law shall be fined up to \$10,000.

(Adds R.S. 14:91.14)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Add an exception to the offense for an Internet service provider or interactive computer service provider for material published or distributed by another person.
2. Add an exception to the offense for material that is a bona fide news or public interest broadcast, website, video, report, or event.
3. Provide that proposed law does not affect the rights of any news-gathering organization and provide a definition for "news-gathering organization".

The House Floor Amendments to the engrossed bill:

1. Add an exception to the offense for radio or television broadcast licensees of the Federal Communications Commission for material published or distributed by another person.