ENROLLED

2015 Regular Session

ACT No. 187

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

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

<u>§91.14. Unlawful distribution of material harmful to minors through the Internet</u>

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

<u>(2) The failure to comply with the provisions of Paragraph (1) of this Subsection shall constitute the unlawful distribution of material harmful to minors through the Internet.</u>

<u>(3) If a person or entity in Louisiana publishes material harmful to minors on the Internet and complies with the provisions of Paragraph (1) of this Subsection, the person or entity shall not be held liable under the provisions of this Section if the person seeking to access the material is under the age of eighteen and falsely acknowledges and attests that he is eighteen years of age or older.</u>

<u>(4) No Internet service provider, interactive computer service provider as defined by 47 U.S.C. 230(f), or radio or television broadcast licensee of the Federal</u>

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Communications Commission shall be deemed to be a publisher or distributor of material harmful to minors that is provided by another person.

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

B. For purposes of this Section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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