

SENATE BILL NO. 152

BY SENATOR CROWE

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

CONSUMERS/PROTECTION. Creates an unfair or deceptive trade practice for a retailer to sell or distribute material containing sexually explicit conduct to a minor. (1/1/10)

1 AN ACT

2 To enact R.S. 51:1427, relative to unfair or deceptive trade practices; to prohibit certain
3 goods, materials, and services from being sold or distributed to minors; to provide
4 for definitions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 51:1427 is hereby enacted to read as follows:

7 **§1427. Unfair or deceptive trade practices; sale or distribution of certain**
8 **goods, materials, or services to minors**

9 **A.(1) It shall be an unfair or deceptive trade practice for any retail**
10 **business to engage in a pattern of activity where the retailer, on at least five**
11 **separate occasions, sells or distributes goods, materials, or services to anyone**
12 **under the age of eighteen where such goods, materials, or services contain**
13 **sexually explicit conduct.**

14 **(2) For the purposes of this Section, "sexually explicit conduct" shall**
15 **mean any one or more of the following:**

16 **(a) Graphic sexual intercourse, including genital to genital, oral to**
17 **genital, anal to genital, or oral to genital, or oral to anal, whether between**

1 persons of the same or opposite sex, or between a person and an animal.

2 (b) Masturbation where the genital, breast, or pubic area of any person
3 is exhibited.

4 (c) Sadistic or masochistic abuse, where the genital, breast, or pubic area
5 of any person is exhibited.

6 (d) Graphic or simulated lascivious exhibition of the genital or pubic
7 area of any person.

8 B. Any violation of this Section shall be deemed an unfair trade practice
9 and shall subject the violator to any and all actions and penalties provided for
10 in this Chapter.

11 C. This Section shall not apply to speech or content distributed,
12 communicated, or otherwise made available on an interactive computer service.
13 For the purpose of this Section, the term "interactive computer service" shall
14 mean any information system, or access software provider that offers users the
15 capability for generating, acquiring, storing, transforming, processing,
16 retrieving, utilizing, or making available information, including a service or
17 system that provides or enables computer access by multiple users to a
18 computer server.

19 Section 2. This Act shall become effective on January 1, 2010.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Crowe (SB 152)

Present law provides that the attorney general has the authority to protect the public, investigate and restrain unfair or deceptive trade practices pursuant to the Unfair Trade Practices and Consumer Protection Law.

Proposed law retains present law and provides that it will be an unfair or deceptive trade practice for any retail business to engage in a pattern of activity where a retailer, on at least five separate occasions, sells or distributes goods, materials, or services to anyone under the age of 18 where such goods, materials, or services contain sexually explicit conduct.

Proposed law defines "sexually explicit conduct" to mean any of the following:

1. Graphic sexual intercourse, including genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex, or

- between a person and an animal.
2. Masturbation where the genital, breast, or pubic area of any person is exhibited.
 3. Sadistic or masochistic abuse, where the genital, breast, or pubic area of any person is exhibited.
 4. Graphic or simulated lascivious exhibition of the genital or pubic area of any person.

Present law provides that the attorney general may pursue an injunction, in court, against a person who violates the terms of the Unfair Trade Practices and Consumer Protection Law or obtain a voluntary compliance agreement with the violator, in lieu of that court ordered injunction.

Present law provides that, if the injunction or a written voluntary compliance agreement is violated, the attorney general may pursue a civil fine in court of not more than \$5,000.

Proposed law retains present law and provides that a retailer who engages in a pattern of activity by selling obscene materials to a minor can be subjected to the civil penalties contained in the Unfair Trade Practices and Consumer Protection Law.

Proposed law does not apply to the internet.

Effective January 1, 2010.

(Adds R.S. 51:1427)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill.

1. Changes language from prohibiting a business from selling or distributing materials which are labeled with an age restriction to a person under the recommended age to a restriction against selling or distributing materials containing sexually explicit conduct to minors.
2. Provides a definition for sexually explicit conduct.
3. Exempts internet providers.