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## DIGEST

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Smith

HB No. 12

**Abstract:** Repeals certain provisions of crime against nature held to be unconstitutional and amends crime against nature and aggravated crime against nature relative to the repeal of the unconstitutional provision.

Present law (R.S. 14:89) defines crime against nature as the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal and provides criminal penalties for convictions of this offense.

Present law (R.S. 14:89.1) defines aggravated crime against nature as crime against nature committed under certain circumstances including resistance by the victim, threats of great and immediate bodily harm to the victim, and when the victim is incapable of giving consent or resisting due to his age, unsoundness of mind, when or by reason of stupor produced by a narcotic or anesthetic agent.

In 2003, in the case *Lawrence v. Texas*, 539 U.S. 558 (2003), the U.S. Supreme Court held that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violates the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution.

Based on the holding in the *Lawrence* decision, in the case *La. Electorate of Gays and Lesbians v. Connick*, 902 So.2d 1090 (5<sup>th</sup> Cir. 2005), the 5<sup>th</sup> Circuit Court of Appeals recognized the unconstitutionality of present law (R.S. 14:89), but held that the trial court could sever unconstitutional portions of present law and leave in effect the portion forbidding copulation with an animal.

Proposed law repeals the provisions of crime against nature relative to consensual, uncompensated sexual activity between persons of the same sex which was held to be unconstitutional by the 5<sup>th</sup> Circuit Court of Appeals and the U.S. Supreme Court. Proposed law further repeals the penalty provisions associated with convictions involving this particular type of activity.

Proposed law amends present law aggravated crime against nature to reflect the repeal of this unconstitutional provision by defining aggravated crime against nature as the "unnatural carnal copulation by a human being with another" when committed under certain circumstances provided for in present law. Proposed law further provides that for aggravated crime against nature, emission is not necessary, and the use of the genital organ of the offender is sufficient to constitute the crime.

Proposed law retains all other provisions of present law relative to crime against nature and aggravated crime against nature.

(Amends R.S. 14:89 and 89.1(A); Adds R.S. 14:89.1(C))