

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; to provide for notice; 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 which depict**
13 **sexually explicit conduct, provided that written notice has been given to the**
14 **retailer pursuant to Subsection D of this Section.**

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

17 **(a) Graphic sexual intercourse, including genital to genital, oral to**

1 genital, anal to genital, or oral to anal, whether between persons of the same or
2 opposite sex, or between a person and an animal.

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

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

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

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

12 C.(1) This Section shall not apply to speech or content distributed,
13 communicated, or otherwise made available on an interactive computer service.
14 For the purpose of this Section, the term "interactive computer service" shall
15 mean any information system, or access software provider that offers users the
16 capability for generating, acquiring, storing, transforming, processing,
17 retrieving, utilizing, or making available information, including a service or
18 system that provides or enables computer access by multiple users to a
19 computer server.

20 (2)(a) This Section shall not apply to speech or content distributed,
21 communicated, or otherwise made available on a cable system.

22 (b) For purposes of this Section, the term "cable system" shall mean a
23 facility consisting of a set of closed transmission paths and associated signal
24 generation, reception, and control equipment that is designed to provide cable
25 service which includes video programming and which is provided to multiple
26 subscribers within a community but does not include the following facilities or
27 systems:

28 (i) A facility that serves only to retransmit the television signals of one
29 or more television broadcast stations.

1 (ii) A facility that serves subscribers without using any public right of
 2 way.

3 (iii) A facility of a common carrier which is subject, in whole or in part,
 4 to common carrier regulation, except that such facility shall be considered a
 5 cable system to the extent the facility is used in the transmission of video
 6 programming directly to subscribers, unless the extent of such use is solely to
 7 provide interactive on-demand services.

8 (iv) An open video system to the extent the system is deemed under
 9 federal law not to be a cable system.

10 (v) Any facilities of an electric utility used solely for operating its electric
 11 system.

12 D. When a complaint is received alleging that a retailer has sold or
 13 distributed goods, materials, or services to a person under the age of eighteen,
 14 which meets the definition of Paragraph (2) of Subsection A of this Section, the
 15 Attorney General's Public Protection Division, Consumer Protection Section,
 16 shall notify the retailer, in writing by certified mail, that a complaint has been
 17 made. The complaint shall include a brief description of the goods, materials,
 18 or services sold or distributed which served as the basis for the complaint and
 19 the date that the alleged sale or distribution occurred. The written notice shall
 20 also advise the retailer that five such complaints may subject the retailer to a
 21 formal investigation by the Consumer Protection Section to determine if an
 22 unfair or deceptive trade practice, pursuant to this Section, has occurred.

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

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Broussard-Johnson.

DIGEST

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 exhibitions 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.

Proposed law does not apply to content distributed by a cable system and defines "cable system."

Proposed law provides that when a complaint is received alleging that a retailer has sold or distributed goods, materials or services to a person under the age of 18, meeting the definition from the Attorney General's Public Protection Division, Consumer Protection Section, the retailer will be notified via certified mail. Further provides the complaint will include a brief description of the materials or services sold, in addition to the date of the alleged sale or deceptive trade.

Proposed law provides that the written notice will advise the retailer that five such complaints may subject the retailer to a formal investigation by the Consumer Protection Section to determine if an unfair or deceptive trade practice, pursuant to this Section, has occurred.

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.

Senate Floor Amendments to engrossed bill.

1. Clarifies that "written notice must be given to a retailer" when a complaint is received.
2. Technical corrections made.
3. Adds proposed law indicating this Section will not apply to content distributed by a cable system and defines "cable system."
4. Adds proposed law that a retailer will be notified "in writing by certified mail" of an alleged complaint and the complaint will include a brief description and the date the alleged sale occurred.
5. Adds proposed law indicating written notification will be sent to the retailer that five complaints may subject the retailer to a formal investigation.