

SENATE BILL NO. 500

BY SENATORS CROWE AND DORSEY AND REPRESENTATIVES ABRAMSON, ARMES, ARNOLD, BALDONE, BARRAS, BARROW, BILLIOT, HENRY BURNS, TIM BURNS, BURRELL, CARMODY, EDWARDS, ELBERT GUILLORY, MICKEY GUILLORY, HARDY, HARRISON, HAZEL, HENDERSON, HENRY, HINES, HOFFMANN, HOWARD, HUTTER, MICHAEL JACKSON, JOHNSON, SAM JONES, KATZ, LEGER, LIGI, LORUSSO, MARCHAND, MONICA, MORRELL, NORTON, PEARSON, PONTI, RICHMOND, SCHRODER, JANE SMITH, PATRICIA SMITH, ST. GERMAIN, TEMPLET, TRAHAN, TUCKER AND WILLMOTT

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AN ACT

To amend and reenact R.S. 15:541(12), (13), (14), (15), (16), (17), (18), (19), (20), (21) and (22), 561.2(B), 561.5(2), and (16) and R.S. 51:1425(B) and (D) and to enact R.S. 14:81.3(B)(3), R.S. 15:541(23), (24) and (25), 545.1, 549(H) and (I), 561.5(17), R.S. 17:280 and R.S. 51:1426 and to repeal R.S. 15:541(14.1) and (14.2), relative to the Internet; to provide for certain penalties for persons convicted of computer aided solicitation of a minor; to require certain restrictions on Internet use by registered sex offenders; to require the Department of Education to develop a curriculum for Internet safety; to require sex offenders who are subject to supervision to agree to certain conditions of parole; to provide for certain definitions; to require that certain duties be performed by providers of interactive computer services; to require the Department of Public Safety and Corrections to make certain notifications; to provide for unfair trade practices; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 14:81.3(B)(3) is hereby enacted to read as follows:

§81.3. Computer-aided solicitation of a minor

* * *

B. * * *

1 disposition adverse to the subject, and for which proceedings are no longer actively
2 pending. There shall be a rebuttable presumption that proceedings are no longer
3 actively pending if more than one year has elapsed since arrest, citation, or service
4 of warrant and no disposition has been entered.

5 ~~(14.1)~~**(16)** "Predatory" means an act directed at a stranger or a person with
6 whom a relationship has been established or promoted for the primary purpose of
7 victimization.

8 ~~(14.1)~~**(17)** "Sex offense" means deferred adjudication, adjudication withheld,
9 or conviction for the perpetration or attempted perpetration of R.S. 14:78 (incest),
10 R.S. 14:78.1 (aggravated incest), R.S. 14:89 (crime against nature), R.S. 14:89.1
11 (aggravated crime against nature), R.S. 14:92(A)(7) (contributing to the delinquency
12 of juveniles), R.S. 14:93.5 (sexual battery of the infirm), R.S. 14:283 (video
13 voyeurism), a second or subsequent conviction of R.S. 14:283.1 (voyeurism) or any
14 provision of Subpart C of Part II or Subpart A(1) of Part V of Chapter 1 of Title 14
15 of the Louisiana Revised Statutes of 1950, committed on or after June 18, 1992, or
16 committed prior to June 18, 1992, if the person, as a result of the offense, is under
17 the custody of the Department of Public Safety and Corrections on or after June 18,
18 1992. A conviction for any offense provided in this definition includes a conviction
19 for the offense under the laws of another state, or military, territorial, foreign, tribal,
20 or federal law which is equivalent to an offense provided for in this Chapter, unless
21 the tribal court or foreign conviction was not obtained with sufficient safeguards for
22 fundamental fairness and due process for the accused as provided by the federal
23 guidelines adopted pursuant to Adam Walsh Child Protection and Safety Act of
24 2006.

25 ~~(14.2)~~**(18)** "Sexual offense against a victim who is a minor" means a
26 conviction for the perpetration or attempted perpetration of, or conspiracy to commit,
27 any of the following:

28 (a) Sexual battery (R.S. 14:43.1) when the victim is under the age of
29 eighteen.

30 (b) Oral sexual battery (R.S. 14:43.3).

1 (c) Human trafficking (R.S. 14:46.2(B)(2)).

2 (d) Aggravated incest (R.S. 14:78.1) under the circumstances not listed as
3 those which constitute an "aggravated offense" as defined in this Section.

4 (e) Pornography involving juveniles (R.S. 14:81.1).

5 (f) Molestation of a juvenile (R.S. 14:81.2).

6 (g) Computer-aided solicitation of a minor (R.S. 14:81.3).

7 (h) Prostitution; persons under seventeen (R.S. 14:82.1).

8 (i) Enticing minors into prostitution (R.S. 14:86).

9 (j) Pandering in violation of R.S. 14:84(1), (3), (5), and (6).

10 (k) Aggravated crime against nature (R.S. 14:89.1).

11 ~~(15)~~**(19)** "Sexual predator commission," the commission, means an advisory
12 panel containing not less than two nor more than three physicians who are licensed
13 to practice medicine in Louisiana, who have been in the actual practice of medicine
14 for not less than three consecutive years immediately preceding the appointment, and
15 who are qualified by training or experience in forensic evaluations of sex offenders.
16 The court may appoint, in lieu of one physician, a psychologist who is licensed to
17 practice psychology in Louisiana, who has been engaged in the practice of clinical
18 or counseling psychology for not less than three consecutive years immediately
19 preceding the appointment, and who is qualified by training or experience in forensic
20 evaluations of sex offenders. A list of qualified physicians and psychologists shall
21 be provided to the court by the Department of Health and Hospitals.

22 ~~(16)~~**(20)** "Sexually violent predator" means a person who has been convicted
23 of a sex offense as defined in Paragraph ~~14:1~~**(17)** of this Section and who has a
24 mental abnormality or anti-social personality disorder that makes the person likely
25 to engage in predatory sexually violent offenses as determined by the sentencing
26 court upon receipt and review of relevant information including the recommendation
27 of the sexual predator commission as defined in Paragraph ~~(15)~~**(19)** of this Section.

28 ~~(17)~~**(21)** "The administration of criminal justice" means performance of any
29 of the following activities: detection, apprehension, detention, pretrial release, post-
30 trial release, prosecution, adjudication, correctional supervision, or rehabilitation of

1 accused persons or criminal offenders. The term also includes criminal identification
 2 activities, the collection, storage, and dissemination of criminal history record
 3 information, and the compensation of victims of crime.

4 ~~(18) "Institution of postsecondary education" means any public or private~~
 5 ~~institution of postsecondary education in the state licensed by the Board of Regents~~
 6 ~~under the provisions of R.S. 17:1808 or each proprietary school licensed by the~~
 7 ~~Board of Regents under the provisions of R.S. 17:3141.4.~~

8 ~~(19) "Student at an institution of postsecondary education" means a person~~
 9 ~~who is enrolled in and attends, on a full-time or part-time basis, any course of~~
 10 ~~academic or vocational instruction conducted at an institution of postsecondary~~
 11 ~~education.~~

12 ~~(20)(a) "Worker" or "employee" means a person who engages in or who~~
 13 ~~knows or reasonably should know that he will engage in any type of occupation,~~
 14 ~~employment, work, or volunteer service on a full-time or part-time basis, with or~~
 15 ~~without compensation, within this state for more than seven consecutive days, or an~~
 16 ~~aggregate of thirty days or more in a calendar year.~~

17 ~~(b) The term includes but is not limited to:~~

18 ~~(i) A person who is self-employed.~~

19 ~~(ii) An employee or independent contractor.~~

20 ~~(iii) A paid or unpaid intern, extern, aide, assistant, or volunteer.~~

21 ~~(21)~~(22) "Residence" means a dwelling where an offender regularly resides,
 22 regardless of the number of days or nights spent there. For those offenders who lack
 23 a fixed abode or dwelling, "residence" shall include the area or place where the
 24 offender habitually lives, including but not limited to a rural area with no address or
 25 a shelter.

26 ~~(22)~~(23) "School" includes any public or nonpublic school which the person
 27 attends, including but not limited to institutions of postsecondary education.

28 **(24) "Student at an institution of postsecondary education" means a**
 29 **person who is enrolled in and attends, on a full-time or part-time basis, any**
 30 **course of academic or vocational instruction conducted at an institution of**

1 postsecondary education.

2 (25)(a) "Worker" or "employee" means a person who engages in or who
3 knows or reasonably should know that he will engage in any type of occupation,
4 employment, work, or volunteer service on a full-time or part-time basis, with
5 or without compensation, within this state for more than seven consecutive days,
6 or an aggregate of thirty days or more in a calendar year.

7 (b) The term includes but is not limited to:

8 (i) A person who is self-employed.

9 (ii) An employee or independent contractor.

10 (iii) A paid or unpaid intern, extern, aide, assistant, or volunteer.

11 * * *

12 §545.1. Duty of interactive computer service

13 A.(1) Upon request from a law enforcement agency, the interactive
14 computer service shall take all steps necessary to preserve records and other
15 evidence in its possession pending the issuance of a court order or other legal
16 process. The provider of interactive computer service shall comply with the
17 request as soon as reasonably practical following receipt.

18 (2) Records referred to in Paragraph (1) of this Subsection shall be
19 retained for ninety days. This time period shall be extended for an additional
20 ninety days upon further request of the law enforcement agency when the law
21 enforcement agency requests the extension within the original ninety day
22 period.

23 (3) Paragraphs (1) and (2) of this Subsection shall be interpreted in a
24 manner consistent with the requirements of federal law that apply to providers
25 of Internet service provided for in Chapter 121 of Title 18 of the United States
26 Code and 42 U.S.C. 13032.

27 B.(1) An interactive computer service shall release evidence regarding
28 all categories of information identified in 18 U.S.C. 2703(c)(2) that are in its
29 possession as soon as reasonably practical, considering other outstanding law
30 enforcement and legal requests, after receiving a court order requiring the

1 interactive computer service to release such evidence to law enforcement.

2 (2) Paragraph (1) of this Subsection shall be interpreted in a manner
3 consistent with the requirements of federal law that apply to providers of
4 Internet service provided for in Chapter 121 of Title 18 of the United States
5 Code and 42 U.S.C. 13032.

6 C. An interactive computer service doing business in this state that
7 obtains knowledge of facts or circumstances from which a violation of any law
8 in this state prohibiting possession, distribution or creation of images containing
9 child pornography or prohibiting sexual activity involving a child is apparent,
10 shall make a report, as soon as reasonably possible, of such facts or
11 circumstances to the Cyber Tip Line at the National Center for Missing and
12 Exploited Children consistent with the requirements of 42 U.S.C. 13032.

13 * * *

14 §549. Notification of release or escape of inmate

15 * * *

16 H. The state shall make the electronic mail address or addresses and
17 instant message names or names collected for the sex offender registry available
18 to any commercial or non-profit entity who makes a request and which
19 promotes child safety, including any of the following:

20 (1) Child safety organizations who attempt to deter the sexual
21 exploitation of children.

22 (2) Educational institutions.

23 (3) Interactive computer services.

24 I. No provider of interactive computer services shall be liable under this
25 Chapter or any other provision of law for any of the following:

26 (1) Identifying, removing, disabling, blocking or otherwise affecting a
27 user on a good faith belief that such user's electronic mail address, instant
28 message name, username, or other similar Internet identifier appeared in the
29 National Sex Offender Registry or any analogous state registry.

30 (2) For failing to identify, block or otherwise prevent a person from

1 registering for its service, or for failing to remove, disable or otherwise affect
 2 a registered user, whose electronic mail address, instant message name or
 3 names, or other similar Internet identifier appears in the National Sex Offender
 4 Registry or any analogous state registry.

5 * * *

6 §561.2. Supervised release upon expiration of sentence

7 * * *

8 B. Any person placed on supervised release pursuant to the provisions of this
 9 Section shall be on supervised release for a ~~period of five years~~ **life** from the date of
 10 release from incarceration. Any person who was placed upon supervised release
 11 pursuant to the provisions of this Section, may petition the Board of Parole for
 12 a termination of the supervision.

13 * * *

14 §561.5. Conditions of supervised release

15 A person placed on supervised release shall comply with the following
 16 conditions:

17 * * *

18 (2) Establish a schedule of a minimum of one meeting per month with his
 19 supervised release officer to provide the officer with his current address, **electronic**
 20 **mail address or addresses, instant message name or names, date of birth,** place
 21 of employment, and verification of compliance with all registration and notification
 22 requirements of a sex offender as required by law.

23 * * *

24 (16) Submit himself or herself to continued supervision, either in person
 25 or through remote monitoring, of all of the following Internet related activities:

26 (a) The person's incoming and outgoing electronic mail and other
 27 Internet-based communications.

28 (b) The person's history of websites visited and the content accessed.

29 (c) The periodic unannounced inspection of the contents of the person's
 30 computer or any other computerized device or portable media device and the

1 removal of such information, computer, computer device or portable media
2 device to conduct a more thorough inspection.

3 (17) Comply with such other specific conditions as are appropriate, stated
4 directly, and without ambiguity so as to be understandable to a reasonable man.

5 Section 3. R.S. 17:280 is hereby enacted to read as follows:

6 §280. Internet safety education; required course

7 A. All public elementary schools, beginning in the third grade, and
8 secondary public schools shall provide instruction for educating children
9 regarding child Internet safety.

10 B. The department shall provide to each public school educational
11 materials for parents regarding child Internet safety.

12 Section 4. R.S. 51:1425(B) and (D) are hereby amended and reenacted and R.S.
13 51:1426 is hereby enacted to read as follows:

14 §1425. Unfair or deceptive acts or practices; prohibition of certain disclosures by
15 an Internet service provider; penalties

16 * * *

17 B. As used in this ~~Section~~ Chapter, "provider of Internet service" means a
18 ~~provider of Internet service who charges a subscriber for access to the Internet or the~~
19 ~~electronic mail address of the subscriber.~~ facilities-based provider or other entity
20 that provides residential consumers with the ability to access the Internet in
21 exchange for consideration such as through a paid subscription or through an
22 agreement to view specific ads or content in exchange for Internet access,
23 provided, however, this term does not include an entity that provides access to
24 the Internet using spectrum regulated by the Federal Communications
25 Commission pursuant to 47 U.S.C. 301, et seq. Systems operated or services
26 offered by libraries or educational institutions are excluded from this definition.

27 * * *

28 D. Nothing herein shall prohibit a provider of Internet service from
29 disclosing information to any state or local agency where such agency's lawful
30 request is otherwise authorized in statute-, including but not limited to disclosure

1 required pursuant to R.S. 15:545.1.

2 * * *

3 §1426. Unfair acts or practices

4 A. If a provider of Internet service knows or has reason to know that a
5 subscriber currently resides in Louisiana, the provider shall make available to
6 the subscriber a product or service which enables the subscriber to control a
7 child's use of the Internet.

8 B. The product or service provided for in Subsection A of this Section
9 must enable the subscriber to do all of the following:

10 (1) Block access to specific websites or domains deemed inappropriate
11 by the subscriber in Subsection A of this Section.

12 (2) Restrict access exclusively to specific websites or domains deemed
13 inappropriate by the subscriber in Subsection A of this Section.

14 (3) Allow the subscriber to monitor a child's use of the Internet service
15 by providing a report to the subscriber of the specific websites or domains that
16 the child has visited or has attempted to visit but could not access the websites
17 or domains because the websites or domains were blocked or restricted by the
18 subscriber.

19 C. For the purposes of this Section, a provider of Internet service shall
20 be deemed to know that a subscriber in Subsection A is a Louisiana resident if
21 the subscriber identifies this state as the subscriber's place of residence at the
22 time of the subscription.

23 D. If a product or service described in this Section is reasonably and
24 commercially available for the technology utilized by the subscriber to access
25 the Internet service, the provider of Internet service shall do all of the following:

26 (1) Provide to the subscriber in Subsection A, at the time of subscription,
27 notice of the availability of the product or service which enables the subscriber
28 to control a child's use of the Internet.

29 (2) Make the product or service described in Subsection A of this Section
30 available to the subscriber, either directly or through a third party vendor. The

1 provider may charge for the product or service.

2 E. Any violation of this Section shall be an unfair trade practice and
3 shall subject the violator to any and all actions and penalties provided for in this
4 Chapter.

5 Section 5. R.S. 15:541(14.1) and (14.2) are hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____