

2015 Regular Session

HOUSE BILL NO. 489

BY REPRESENTATIVES STOKES, BADON, BILLIOT, WESLEY BISHOP, BOUIE, BROWN, HENRY BURNS, TIM BURNS, CARTER, CHANEY, CONNICK, COX, HARRISON, HAZEL, HILL, HOWARD, IVEY, JAMES, MIKE JOHNSON, NANCY LANDRY, MILLER, MORENO, OURSO, PEARSON, POPE, REYNOLDS, RICHARD, SCHRODER, SMITH, ST. GERMAIN, TALBOT, THIBAUT, WHITNEY, PATRICK WILLIAMS, WILLMOTT, AND WOODRUFF

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

CRIME: Creates the crime of nonconsensual disclosure of a private image

1 AN ACT

2 To enact R.S. 14:283.2, relative to the nonconsensual disclosure of private images; to create
3 the crime of nonconsensual disclosure of a private image; to provide for elements of
4 the offense; to provide for criminal penalties; to provide for definitions; to provide
5 for exceptions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 14:283.2 is hereby enacted to read as follows:

8 §283.2. Nonconsensual disclosure of a private image

9 A. A person commits the offense of nonconsensual disclosure of a private
10 image when all of the following occur:

11 (1) The person intentionally discloses an image of another person who is
12 seventeen years of age or older, who is identifiable from the image or information
13 displayed in connection with the image, and whose intimate parts are exposed in
14 whole or in part.

15 (2) The person who discloses the image obtained it under circumstances in
16 which a reasonable person would know or understand that the image was to remain
17 private.

1 (3) The person who discloses the image knew or should have known that the
2 person in the image did not consent to the disclosure of the image.

3 (4) The person who discloses the image has the intent to harass or cause
4 emotional distress to the person in the image, or the person who commits the offense
5 knew or should have known that the disclosure could harass or cause emotional
6 distress to the person in the image.

7 B. Disclosure of an image under any of the following circumstances does not
8 constitute commission of the offense defined in Subsection A of this Section:

9 (1) When the disclosure is made by any criminal justice agency for the
10 purpose of a criminal investigation that is otherwise lawful.

11 (2) When the disclosure is made for the purpose of, or in connection with,
12 the reporting of unlawful conduct to law enforcement or a criminal justice agency.

13 (3) When the person depicted in the image voluntarily or knowingly exposed
14 his or her intimate parts in a public setting.

15 (4) When the image is related to a matter of public interest, public concern,
16 or related to a public figure who is intimately involved in the resolution of important
17 public questions, or by reason of his fame shapes events in areas of concern to
18 society.

19 C. For purposes of this Section:

20 (1) "Criminal justice agency" means any government agency or subunit
21 thereof, or private agency that, through statutory authorization or a legal formal
22 agreement with a governmental unit or agency, has the power of investigation, arrest,
23 detention, prosecution, adjudication, treatment, supervision, rehabilitation, or release
24 of persons suspected, charged, or convicted of a crime; or that collects, stores,
25 processes, transmits, or disseminates criminal history records or crime information.

26 (2) "Disclosure" means to, electronically or otherwise, transfer, give,
27 provide, distribute, mail, deliver, circulate, publish on the internet, or disseminate by
28 any means.

1 (3) "Image" means any photograph, film, videotape, digital recording, or
 2 other depiction or portrayal of an object, including a human body.

3 (4) "Intimate parts" means the fully unclothed, partially unclothed, or
 4 transparently clothed genitals, pubic area, or anus. If the person depicted in the
 5 image is a female, "intimate parts" also means a partially or fully exposed nipple,
 6 including exposure through transparent clothing.

7 D. Nothing in this Section shall be construed to impose liability on the
 8 provider of an interactive computer service as defined by 47 U.S.C. 230(f)(2), an
 9 information service as defined by 47 U.S.C. 153(24), or a telecommunications
 10 service as defined by 47 U.S.C. 153(53), for content provided by another person.

11 E. Whoever commits the offense of nonconsensual disclosure of a private
 12 image shall be fined not more than ten thousand dollars, imprisoned with or without
 13 hard labor for not more than two years, or both.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 489 Reengrossed

2015 Regular Session

Stokes

Abstract: Creates the crime of nonconsensual disclosure of a private image, and provides elements, penalties, and exceptions for the offense.

Proposed law creates the crime of nonconsensual disclosure of a private image and provides that a person commits this offense when all of the following occur:

- (1) The person intentionally discloses an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part.
- (2) The person obtained the image under circumstances in which a reasonable person would know or understand that the image was to remain private.
- (3) The person knew or should have known that the person in the image has not consented to the disclosure of the image.
- (4) The person has the intent to harass or cause emotional distress to the person in the image, or the person who commits the offense knew or should have known that the disclosure could harass or cause emotional distress to the person in the image.

Penalties for the proposed law offense include a fine of up to \$10,000, imprisonment for up to 2 years, or both.

Proposed law provides that disclosure of the image under any of the following circumstances does not constitute commission of the offense:

- (1) When the disclosure is made by any criminal justice agency for the purpose of a lawful criminal investigation.
- (2) When the disclosure is made for the purpose of, or in connection with, the reporting of unlawful conduct to law enforcement or a criminal justice agency.
- (3) When the person depicted in the image voluntarily or knowingly exposed his or her intimate parts in a public setting.
- (4) When the image is related to a matter of public interest, public concern, or related to a public figure who is intimately involved in the resolution of important public questions, or by reason of his fame shapes events in areas of concern to society.

Proposed law defines "criminal justice agency", "disclosure", "image", and "intimate parts".

Provides that this proposed law shall not be construed to impose liability on providers of any of the following services for content provided by another person: interactive computer service, information service, or telecommunications service. Proposed law provides that "interactive computer service", "information service", and "telecommunications service" shall have the same meaning as in present federal law. (47 U.S.C. 153 and 230)

(Adds R.S. 14:283.2)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Amend the provisions relative to the liability of certain service providers for content provided by another person.
2. Remove cable operator from the list of entities upon which liability may not be imposed pursuant to proposed law for content provided by another person.
3. Delete the definitions of cable operator, interactive computer service, and telecommunications service, and provide that the terms "interactive computer service", "information service", and "telecommunications service" shall have the same meaning as in present federal law.