

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

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Senator Dan Claitor, Chair

Judiciary C Committee

Louisiana State Senate

Baton Rouge, LA

April 23, 2018

RE: Opposition to HB 612's amendment to R.S. 14:283.2(A)(4)

Dear Chairman Claitor and members of the committee,

NetChoice writes today to oppose HB 612's amendment to R.S. 14:283.2(A)(4).

Those who engage in harassment are despicable. However, the amendment to R.S. 14:283.2(A)(4) is likely to violate first amendment protections and risks expanding the criminal law to those without specific intent.

HB 612 seeks the following amendment to R.S. 14:283.2(A)(4):

The person who discloses the image has the intent to harass or cause emotional distress to the person in the image, ~~and~~ 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.

Currently, the mens rea of the crime of harassment is a specific intent – the defendant must have the specific intent to cause harm to the victim. However, the change proposed in HB 612 would lower the intent requirement to a general intent level. This exposes R.S. 14:283.2(A)(4) to a constitutional challenge of violating the first amendment.

A Texas Appeals court recently found a similar provision in Texas law an unconstitutional violation of first amendment. *See Jordan Bartlett Jones*, No. 12-17-00346-Cr (TX. 12th Ct of App.)

In that case, the Texas Appeals Court stated:

[The law's] application is not attenuated by the fact that the disclosing person had no intent to harm the depicted person or may have been unaware of the depicted person's identity. Accordingly, we conclude that the criminal prohibition Section 21.16(b) creates is of "alarming breadth" that is "real" and "substantial." *See Stevens*, 559 U.S. at 474, 130 S. Ct. at 1588; *Ferber*, 458 U.S. at 770, 102 S. Ct. at 3361–62.

While we support the goal of protecting citizens from harassment, we respectfully ask that the committee not include HB 612's amendment of R.S. 14:283.2(A)(4).

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org