Regular Session, 2012

SENATE BILL NO. 671

BY SENATOR PETERSON

CRIME/PUNISHMENT. Prohibits inappropriate communication between teachers and students. (8/1/12)

1   AN ACT

2   To enact R.S. 14:103.27, relative to offenses affecting the public sensibility; to create the

3   crime of prohibited communication between educator and student; to provide for

4   definitions; to provide for penalties; and to provide for related matters.

5   Be it enacted by the Legislature of Louisiana:

6   Section 1. R.S. 14:103.27 is hereby enacted to read as follows:

7   **§103.27. Prohibited communication between educator and student**

8   **A. It shall be unlawful for an educator to engage in inappropriate**

9   **communication with a student of any age.**

10   **B. As used in this Section:**

11   **(1) "Educator" means any administrator, coach, instructor,**

12   **paraprofessional, student aide, teacher, or teacher aide at any public or private**

13   **school, assigned, employed, or working at the school or school system where the**

14   **victim is enrolled as a student on a full-time, part-time, or temporary basis.**

15   **(2) "Inappropriate communication" means any communication by an**

16   **educator to a student, regardless of whether the educator or the student**

17   **initiated the communication, that may be viewed as derogatory, sexual, lewd,**

1   **vulgar, threatening, harassing, discriminatory, or suggestive in nature.**

2   **(3) "School" means a public or nonpublic elementary or secondary**

3   **school or learning institution, but shall not include a college or university.**

4   **(4) "Student" includes any student enrolled in a school who is of any age.**

5   **C. The consent of the student or the student's participation in the**

6   **communication shall not be a defense to any violation of this Section.**

7   **D.(1) Whoever violates the provisions of this Section shall be fined not**

8   **more than five hundred dollars, or imprisoned for not more than six months,**

9   **or both.**

10   **(2) For a second or subsequent offense, an offender shall be fined not**

11   **more than two thousand dollars, or imprisoned, with or without hard labor, for**

12   **not less than six months nor more than one year, or both.**

13   **(3)(a) In addition to the penalties provided for in Paragraph (2) of this**

14   **Subsection, an educator convicted of a second offense under this Section, and**

15   **who entered service after August 1, 2012, shall forfeit all accrued rights and**

16   **benefits in any public retirement system of which he is a member.**

17   **(b) The district attorney of the parish in which the offender was**

18   **convicted shall notify the public retirement system of the conviction. For**

19   **purposes of this Subparagraph, "conviction" means a final conviction from**

20   **which no appeal may be taken.**

21   **E. Notwithstanding any claim of privileged communication, any educator**

22   **or other person having cause to believe that prohibited communication between**

23   **an educator and student has occurred shall immediately report such conduct to**

24   **a local or state law enforcement agency.**

25   **F. No cause of action shall exist against any person who in good faith**

26   **makes a report of prohibited communication between an educator and student,**

27   **cooperates in an investigation arising as a result of such report, or participates**

28   **in judicial proceedings arising out of such report, and such person shall have**

29   **immunity from civil or criminal liability that otherwise might be incurred or**

1   **imposed. This immunity shall not extend to any person who makes a report**

2   **known to be false or with reckless disregard for the truth of the report.**

3   **G. In any action to establish damages against a defendant who is alleged**

4   **to have made a false report of prohibited communication between an educator**

5   **and student, the plaintiff shall bear the burden of proving that the defendant**

6   **who filed the report knew that the report was false or that the report was filed**

7   **with reckless disregard for the truth of the report. A plaintiff who fails to meet**

8   **the burden of proof set forth in this Subsection shall pay all court costs and**

9   **attorney fees of the defendant.**

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Proposed law creates the crime of prohibited communication between educator and student.

Proposed law makes it unlawful for an educator to engage in inappropriate communication with a student of any age.

Proposed law provides the following definitions:

1.   "Educator" means any administrator, coach, instructor, paraprofessional, student aide, teacher, or teacher aide at any public or private school, assigned, employed, or working at the school or school system where the victim is enrolled as a student on a full-time, part-time, or temporary basis.

2.   "Inappropriate communication" means any communication by an educator to a student, regardless of whether the educator or student initiated the communication, that may be viewed as derogatory, sexual, lewd, vulgar, threatening, harassing, discriminatory, or suggestive in nature.

3.   "School" means a public or nonpublic elementary or secondary school or learning institution, but does not include a college or university.

4.   "Student" includes any student enrolled in a school who is of any age.

Proposed law provides that the consent of the student or the participation of the student in the communication is not a defense to any violation of proposed law.

Proposed law provides that whoever violates the provisions of proposed law is to be fined not more than $500, or imprisoned for not more than six months, or both.

Proposed law further provides that for a second or subsequent offense, an offender is to be fined not more than $2,000, or imprisoned, with or without hard labor, for not less than six months nor more than one year, or both.

Proposed law provides that in addition to these penalties, an educator convicted of a second offense and who entered service after 8/1/12 (the effective date of proposed law) forfeits all

Coding: Words which are ~~struck through~~ are deletions from existing law;
words in **boldface type and underscored** are additions.

accrued rights and benefits in any public retirement system of which he is a member.

Proposed law further provides that the district attorney for the parish in which the offender was convicted is to notify the public retirement system of the conviction. For purposes of proposed law, "conviction" means a final conviction from which no appeal may be taken.

Proposed law provides that, notwithstanding any claim of privileged communication, any educator or other person having cause to believe that prohibited communication between an educator and student has occurred must immediately report such conduct to a local or state law enforcement agency.

Proposed law provides that no cause of action exists against any person who in good faith makes a report, cooperates in any investigation arising as a result of such report, or participates in judicial proceedings arising out of such report, and such persons have immunity from civil or criminal liability that otherwise might be incurred or imposed.

Proposed law further provides that this immunity does not extend to any person who makes a report known to be false or with reckless disregard for the truth of the report.

Proposed law provides that in any action to establish damages against a defendant who is alleged to have made a false report of a prohibited communication between an educator and student, the plaintiff bears the burden of proving that the defendant who filed the report knew the report was false or that the report was filed with reckless disregard for the truth of the report, and a plaintiff who fails to meet this burden of proof must pay all court costs and attorney fees of the defendant.

Effective August 1, 2012.

(Adds R.S. 14:103.27)