



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4640

Introduced 2/1/2012, by Rep. Darlene J. Senger

SYNOPSIS AS INTRODUCED:

720 ILCS 135/1-2

720 ILCS 135/1-2.5 new

720 ILCS 135/2

from Ch. 134, par. 16.5

Amends the Harassing and Obscene Communications Act. In addition to other elements of the offense, provides that harassment through electronic communications includes knowingly and by any means making repeated, unwanted, and harassing communication to another person. Creates the offense of harassment by cyber identity theft. Defines the offense and establishes penalties for violation. Effective immediately.

LRB097 17261 RLC 62462 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Harassing and Obscene Communications Act is
5 amended by changing Sections 1-2 and 2 and by adding Section
6 1-2.5 as follows:

7 (720 ILCS 135/1-2)

8 Sec. 1-2. Harassment through electronic communications.

9 (a) Harassment through electronic communications is the
10 use of electronic communication for any of the following
11 purposes:

12 (1) Transmitting ~~Making~~ any comment, request,
13 suggestion or proposal which is obscene with an intent to
14 offend;

15 (2) Interrupting, with the intent to harass, the
16 telephone service or the electronic communication service
17 of any person;

18 (3) Transmitting to any person, with the intent to
19 harass and regardless of whether the communication is read
20 in its entirety or at all, any file, document, or other
21 communication which prevents that person from using his or
22 her telephone service or electronic communications device;

23 (3.1) Transmitting an electronic communication or

1 knowingly inducing a person to transmit an electronic
2 communication for the purpose of harassing another person
3 who is under 13 years of age, regardless of whether the
4 person under 13 years of age consents to the harassment, if
5 the defendant is at least 16 years of age at the time of
6 the commission of the offense;

7 (4) Threatening injury to the person or to the property
8 of the person to whom an electronic communication is
9 directed or to any of his or her family or household
10 members; ~~or~~

11 (4.1) Knowingly and by any means making repeated,
12 unwanted, and harassing communication to another person;
13 or

14 (5) Knowingly permitting any electronic communications
15 device to be used for any of the purposes mentioned in this
16 subsection (a).

17 (b) As used in this Act:

18 (1) "Electronic communication" means any transfer of
19 signs, signals, writings, images, sounds, data or
20 intelligence of any nature transmitted in whole or in part
21 by a wire, radio, electromagnetic, photoelectric or
22 photo-optical system. "Electronic communication" includes
23 transmissions through an electronic device including, but
24 not limited to, a telephone, cellular phone, computer, or
25 pager, which communication includes, but is not limited to,
26 e-mail, instant message, text message, or voice mail.

1 (2) "Family or household member" includes spouses,
2 former spouses, parents, children, stepchildren and other
3 persons related by blood or by present or prior marriage,
4 persons who share or formerly shared a common dwelling,
5 persons who have or allegedly share a blood relationship
6 through a child, persons who have or have had a dating or
7 engagement relationship, and persons with disabilities and
8 their personal assistants. For purposes of this Act,
9 neither a casual acquaintanceship nor ordinary
10 fraternization between 2 individuals in business or social
11 contexts shall be deemed to constitute a dating
12 relationship.

13 (c) Telecommunications carriers, commercial mobile service
14 providers, and providers of information services, including,
15 but not limited to, Internet service providers and hosting
16 service providers, are not liable under this Section, except
17 for willful and wanton misconduct, by virtue of the
18 transmission, storage, or caching of electronic communications
19 or messages of others or by virtue of the provision of other
20 related telecommunications, commercial mobile services, or
21 information services used by others in violation of this
22 Section.

23 (Source: P.A. 96-328, eff. 8-11-09; 97-303, eff. 8-11-11.)

24 (720 ILCS 135/1-2.5 new)

25 Sec. 1-2.5. Harassment by cyber identity theft.

1 (a) A person commits harassment by cyber identity theft
2 when he or she knowingly:

3 (1) creates, modifies, or uses a fictitious online
4 account with the intent to harass, defame, or otherwise
5 humiliate a person or entity without the consent of that
6 person or entity; or

7 (2) without the authorization of an account holder or
8 in excess of the authority granted by an account holder to
9 him or to her:

10 (A) accesses or causes to be accessed by any means
11 an electronic mail (e-mail), instant messaging, or
12 social networking website account;

13 (B) accesses or causes to be accessed by any means
14 an electronic mail (e-mail), instant messaging, or
15 social networking website account, and views the
16 content of an electronic communication; or

17 (C) accesses or causes to be accessed by any means
18 a computer or any part thereof, a computer network,
19 electronic mail (e-mail), instant messaging, or social
20 networking website account, and

21 (i) deletes an electronic communication; or

22 (ii) transmits an electronic communication
23 purporting to be the account holder; or

24 (iii) changes the password for the account;

25 (3) without the authorization of an account holder or
26 in excess of the authority granted by an account holder to

1 him or her:

2 (A) accesses or causes to be accessed by any means
3 a social networking website account, and:

4 (i) alters the privacy settings for the
5 account holder's account; or

6 (ii) gives himself or another access to view
7 private content on the account holder's social
8 networking website account;

9 (B) accesses or causes to be accessed by any means
10 a computer or any part thereof, a computer network,
11 electronic mail (e-mail) account, instant messaging
12 account, social networking website account, and

13 (i) adds, deletes, or alters content; or

14 (ii) posts content or an electronic
15 communication to another's social networking
16 website account purporting to be from the account
17 holder.

18 (b) Definitions.

19 (1) Unless as otherwise specified in this subsection
20 (b), terms used in this Section 1-2.5 shall have the same
21 meanings as the terms defined in Article 17 of the Criminal
22 Code of 1961.

23 (2) As used in this Section 1-2.5:

24 "Access" means to, by any means, use, instruct,
25 communicate with, store data in, retrieve or intercept
26 data from, or otherwise utilize any services of, a

1 computer, a network, or data.

2 "Account holder" means the person or entity to whom
3 or to which electronic mail or instant message service
4 account, social networking website profile, or other
5 virtual identity is registered.

6 "Fictitious online account" means any electronic
7 mail instant messaging, social networking website,
8 weblog or micro weblog account or any other virtual
9 identity associated with any computer or on-line
10 service which falsely purports to belong to or be
11 created by any person unless the account or profile
12 clearly indicates that it does not represent or is
13 associated with that person or entity. An account or
14 profile clearly indicates that it does not represent or
15 is associated with a person or entity when electronic
16 messages which are not limited in length contain an
17 express disclosure or when the account profile
18 expressly discloses the same. "Fictitious online
19 account" does not include an account created and
20 utilized by a law enforcement officer solely in the
21 performance of his or her duties.

22 (720 ILCS 135/2) (from Ch. 134, par. 16.5)

23 Sec. 2. Sentence.

24 (a) Except as provided in subsection (b), a person who
25 violates any of the provisions of Section 1, 1-1, or 1-2 of

1 this Act is guilty of a Class B misdemeanor. Except as provided
2 in subsection (b), a second or subsequent violation of Section
3 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which
4 the court shall impose a minimum of 14 days in jail or, if
5 public or community service is established in the county in
6 which the offender was convicted, 240 hours of public or
7 community service.

8 (b) In any of the following circumstances, a person who
9 violates Section 1, 1-1, or 1-2 of this Act shall be guilty of
10 a Class 4 felony:

11 (1) The person has 3 or more prior violations in the
12 last 10 years of harassment by telephone under Section 1-1
13 of this Act, harassment through electronic communications
14 under Section 1-2 of this Act, or any similar offense of
15 any state;

16 (2) The person has previously violated the harassment
17 by telephone provisions of Section 1-1 of this Act or the
18 harassment through electronic communications provisions of
19 Section 1-2 of this Act or committed any similar offense in
20 any state with the same victim or a member of the victim's
21 family or household;

22 (3) At the time of the offense, the offender was under
23 conditions of bail, probation, mandatory supervised
24 release or was the subject of an order of protection, in
25 this or any other state, prohibiting contact with the
26 victim or any member of the victim's family or household;

1 (4) In the course of the offense, the offender
2 threatened to kill the victim or any member of the victim's
3 family or household;

4 (5) The person has been convicted in the last 10 years
5 of a forcible felony as defined in Section 2-8 of the
6 Criminal Code of 1961;

7 (6) The person violates paragraph (4.1) of Section 1-1
8 or paragraph (3.1) of subsection (a) of Section 1-2; or

9 (7) The person was at least 18 years of age at the time
10 of the commission of the offense and the victim was under
11 18 years of age at the time of the commission of the
12 offense.

13 (c) A person who violates Section 1-2.5 shall be guilty of:

14 (1) A Class B misdemeanor for a violation of
15 subparagraph (A) of paragraph (2) of subsection (a) of
16 Section 1-2.5 for which the court shall impose a minimum
17 fine of \$500 or, if public or community service is
18 established in the county in which the offender was
19 convicted, 30 hours of public or community service.

20 (2) A Class A misdemeanor for a first violation of
21 paragraph (1) of subsection (a) of Section 1-2.5,
22 subparagraph (B) of paragraph (2) of subsection (a) of
23 Section 1-2.5, or subparagraph (A) of paragraph (3) of
24 subsection (a) of Section 1-2.5, for which the court shall
25 impose a minimum fine of \$1,000 or, if public or community
26 service is established in the county in which the offender

1 was convicted, 80 hours of public or community service.

2 (3) A Class 4 felony for a second or subsequent
3 violation of paragraph (1) of subsection (a) of Section
4 1-2.5, subparagraph (B) of paragraph (2) of subsection (a)
5 of Section 1-2.5, or subparagraph (A) of paragraph (3) of
6 subsection (a) of Section 1-2.5.

7 (4) A Class 4 felony for a violation of subparagraph
8 (C) of paragraph (2) of subsection (a) of Section 1-2.5 or
9 subparagraph (B) of paragraph (3) of subsection (a) of
10 Section 1- 2.5.

11 (Source: P.A. 95-984, eff. 6-1-09.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.