



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5320

Introduced 2/5/2010, by Rep. Darlene J. Senger

SYNOPSIS AS INTRODUCED:

720 ILCS 135/1-2

720 ILCS 135/2

from Ch. 134, par. 16.5

Amends the Harassing and Obscene Communications Act. Includes additional factors that constitute violations of the Act by harassment through electronic communications. Establishes penalties for these additional offenses.

LRB096 17160 RLC 32492 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

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 as follows:

6 (720 ILCS 135/1-2)

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

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

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

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

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

21 (3.1) Transmitting an electronic communication or
22 knowingly inducing a person to transmit an electronic
23 communication for the purpose of harassing another person

1 who is under 13 years of age, regardless of whether the
2 person under 13 years of age consents to the harassment, if
3 the defendant is at least 16 years of age at the time of
4 the commission of the offense;

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

9 (4.1) Knowingly frightening, intimidating, or causing
10 emotional distress to another person by anonymously making
11 a telephone call or any electronic communication; or making
12 false postings on an Internet website for longer than 24
13 hours regardless of that information being sent to the
14 victim;

15 (4.2) Knowingly communicating with another person by
16 any electronic means who is, or who purports to be under 18
17 years of age and in so doing and without good cause
18 recklessly frightening, intimidating, or causing emotional
19 distress to such other person;

20 (4.3) Knowingly making repeated unwanted communication
21 to another person;

22 (4.4) Without good cause engaging in any other act with
23 the purpose of frightening, intimidating, or causing
24 emotional distress to another person, causing such person
25 to be frightened, intimidated, or emotionally distressed,
26 and such person's response to the act is one of a person of

1 average sensibilities considering the age of such person;

2 or

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

6 (b) As used in this Act:

7 (1) "Electronic communication" means any transfer of
8 signs, signals, writings, images, sounds, data or
9 intelligence of any nature transmitted in whole or in part
10 by a wire, radio, electromagnetic, photoelectric or
11 photo-optical system. "Electronic communication" includes
12 transmissions by a computer through the Internet to another
13 computer.

14 (2) "Family or household member" includes spouses,
15 former spouses, parents, children, stepchildren and other
16 persons related by blood or by present or prior marriage,
17 persons who share or formerly shared a common dwelling,
18 persons who have or allegedly share a blood relationship
19 through a child, persons who have or have had a dating or
20 engagement relationship, and persons with disabilities and
21 their personal assistants. For purposes of this Act,
22 neither a casual acquaintanceship nor ordinary
23 fraternization between 2 individuals in business or social
24 contexts shall be deemed to constitute a dating
25 relationship.

26 (c) Telecommunications carriers, commercial mobile service

1 providers, and providers of information services, including,
2 but not limited to, Internet service providers and hosting
3 service providers, are not liable under this Section, except
4 for willful and wanton misconduct, by virtue of the
5 transmission, storage, or caching of electronic communications
6 or messages of others or by virtue of the provision of other
7 related telecommunications, commercial mobile services, or
8 information services used by others in violation of this
9 Section.

10 (d) Paragraphs (4.1), (4.2), (4.3), and (4.4) of subsection
11 (a) of this Section do not apply to activities of federal,
12 state, county, or municipal law enforcement officers
13 conducting investigations of a violation of federal, State,
14 county, or municipal law.

15 (Source: P.A. 95-849, eff. 1-1-09; 95-984, eff. 6-1-09; 96-328,
16 eff. 8-11-09.)

17 (720 ILCS 135/2) (from Ch. 134, par. 16.5)

18 Sec. 2. Sentence.

19 (a) Except as provided in subsection (b), a person who
20 violates any of the provisions of Section 1, 1-1, or 1-2 of
21 this Act is guilty of a Class B misdemeanor. Except as provided
22 in subsection (b), a second or subsequent violation of Section
23 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which
24 the court shall impose a minimum of 14 days in jail or, if
25 public or community service is established in the county in

1 which the offender was convicted, 240 hours of public or
2 community service.

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

6 (1) The person has 3 or more prior violations in the
7 last 10 years of harassment by telephone under Section 1-1
8 of this Act, harassment through electronic communications
9 under Section 1-2 of this Act, or any similar offense of
10 any state;

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

17 (3) At the time of the offense, the offender was under
18 conditions of bail, probation, mandatory supervised
19 release or was the subject of an order of protection, in
20 this or any other state, prohibiting contact with the
21 victim or any member of the victim's family or household;

22 (4) In the course of the offense, the offender
23 threatened to kill the victim or any member of the victim's
24 family or household;

25 (5) The person has been convicted in the last 10 years
26 of a forcible felony as defined in Section 2-8 of the

1 Criminal Code of 1961;

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

4 (7) The person was at least 18 years of age at the time
5 of the commission of the offense and the victim was under
6 18 years of age at the time of the commission of the
7 offense.

8 (c) (1) Except as otherwise provided in this subsection (c),
9 a person who violates paragraph (4.1), (4.2), (4.3), or (4.4)
10 of subsection (a) of Section 1-2 of this Act is guilty of a
11 Class A misdemeanor.

12 (2) A person who is 21 years of age or over who violates
13 paragraph (4.1), (4.2), (4.3), or (4.4) of subsection (a) of
14 Section 1-2 of this Act in which the victim of the offense, at
15 the time of the commission of the offense, is under 17 years of
16 age is guilty of a Class 4 felony.

17 (3) A person who violates paragraph (4.1), (4.2), (4.3), or
18 (4.4) of subsection (a) of Section 1-2 of this Act who has
19 previously pleaded guilty to or has been found guilty of a
20 violation of paragraph (4.1), (4.2), (4.3), or (4.4) of
21 subsection (a) of Section 1-2 of this Act or of any similar
22 offense committed in violation of any county or municipal
23 ordinance of this State or any other state, any similar state
24 law of another state, or any similar federal law, including a
25 violation of the Uniform Code of Military Justice, is guilty of
26 a Class 4 felony.

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