97TH GENERAL ASSEMBLY
State of Illinois
2011 and 2012

HB4640


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.
AN ACT concerning criminal law.

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

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

(720 ILCS 135/1-2)

Sec. 1-2. Harassment through electronic communications.

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

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

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

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

(3.1) Transmitting an electronic communication or
knowingly inducing a person to transmit an electronic
communication for the purpose of harassing another person
who is under 13 years of age, regardless of whether the
person under 13 years of age consents to the harassment, if
the defendant is at least 16 years of age at the time of
the commission of the offense;

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

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

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

(b) As used in this Act:

(1) "Electronic communication" means any transfer of
signs, signals, writings, images, sounds, data or
intelligence of any nature transmitted in whole or in part
by a wire, radio, electromagnetic, photoelectric or
photo-optical system. "Electronic communication" includes
transmissions through an electronic device including, but
not limited to, a telephone, cellular phone, computer, or
pager, which communication includes, but is not limited to,
e-mail, instant message, text message, or voice mail.
(2) "Family or household member" includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this Act, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.

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

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

(720 ILCS 135/1-2.5 new)

Sec. 1-2.5. Harassment by cyber identity theft.
(a) A person commits harassment by cyber identity theft when he or she knowingly:

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

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

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

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

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

(i) deletes an electronic communication; or

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

(iii) changes the password for the account;

(3) without the authorization of an account holder or in excess of the authority granted by an account holder to
him or her:

(A) accesses or causes to be accessed by any means
    a social networking website account, and:
    (i) alters the privacy settings for the
        account holder's account; or
    (ii) gives himself or another access to view
        private content on the account holder's social
        networking website account;

(B) accesses or causes to be accessed by any means
    a computer or any part thereof, a computer network,
    electronic mail (e-mail) account, instant messaging
    account, social networking website account, and
    (i) adds, deletes, or alters content; or
    (ii) posts content or an electronic
        communication to another's social networking
        website account purporting to be from the account
        holder.

(b) Definitions.

(1) Unless as otherwise specified in this subsection
    (b), terms used in this Section 1-2.5 shall have the same
    meanings as the terms defined in Article 17 of the Criminal

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

"Access" means to, by any means, use, instruct,
    communicate with, store data in, retrieve or intercept
    data from, or otherwise utilize any services of, a
computer, a network, or data.

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

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

(720 ILCS 135/2) (from Ch. 134, par. 16.5)
Sec. 2. Sentence.
(a) Except as provided in subsection (b), a person who violates any of the provisions of Section 1, 1-1, or 1-2 of
this Act is guilty of a Class B misdemeanor. Except as provided in subsection (b), a second or subsequent violation of Section 1, 1-1, or 1-2 of this Act is a Class A misdemeanor, for which the court shall impose a minimum of 14 days in jail or, if public or community service is established in the county in which the offender was convicted, 240 hours of public or community service.

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

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

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

(3) At the time of the offense, the offender was under conditions of bail, probation, mandatory supervised release or was the subject of an order of protection, in this or any other state, prohibiting contact with the victim or any member of the victim's family or household;
(4) In the course of the offense, the offender threatened to kill the victim or any member of the victim's family or household;

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

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

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

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

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

(2) A Class A misdemeanor for a first violation of paragraph (1) of subsection (a) of Section 1-2.5, subparagraph (B) of paragraph (2) of subsection (a) of Section 1-2.5, or subparagraph (A) of paragraph (3) of subsection (a) of Section 1-2.5, for which the court shall impose a minimum fine of $1,000 or, if public or community service is established in the county in which the offender
was convicted, 80 hours of public or community service.

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

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

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

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