

ELECTRONIC COMMUNICATION HARASSMENT

AMENDMENT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding electronic communication harassment by amending the penalties.

Highlighted Provisions:

This bill:

- ▶ defines "adult" and "minor";
- ▶ modifies the penalties for electronic communication harassment:
 - by increasing the penalty for repeat offenses; and
 - by providing a greater penalty if the victim is a minor;
- ▶ clarifies that electronic harassment may create a civil cause of action if the electronic communications are not made for legitimate business purposes; and
- ▶ amends a cross reference.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

31A-21-501, as last amended by Laws of Utah 2001, Chapter 116

76-9-201, as last amended by Laws of Utah 2005, Chapter 128

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **31A-21-501** is amended to read:

32 **31A-21-501. Definitions.**

33 For purposes of this part:

34 (1) "Applicant" means:

35 (a) in the case of an individual life or accident and health policy, the person who seeks
36 to contract for insurance benefits; or

37 (b) in the case of a group life or accident and health policy, the proposed certificate
38 holder.

39 (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an
40 individual who is 16 years of age or older who:

41 (a) is or was a spouse of the other party;

42 (b) is or was living as if a spouse of the other party;

43 (c) is related by blood or marriage to the other party;

44 (d) has one or more children in common with the other party; or

45 (e) resides or has resided in the same residence as the other party.

46 (3) "Child abuse" means the commission or attempt to commit against a child a
47 criminal offense described in:

48 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;

49 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;

50 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or

51 (d) Section 76-9-702.5, Lewdness Involving a Child.

52 (4) "Domestic violence" means any criminal offense involving violence or physical
53 harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to
54 commit a criminal offense involving violence or physical harm, when committed by one
55 cohabitant against another and includes commission or attempt to commit, any of the
56 following offenses by one cohabitant against another:

57 (a) aggravated assault, as described in Section 76-5-103;

- 58 (b) assault, as described in Section 76-5-102;
- 59 (c) criminal homicide, as described in Section 76-5-201;
- 60 (d) harassment, as described in Section 76-5-106;
- 61 (e) ~~[telephone]~~ electronic communication harassment, as described in Section
- 62 76-9-201;
- 63 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 64 76-5-301, 76-5-301.1, and 76-5-302;
- 65 (g) mayhem, as described in Section 76-5-105;
- 66 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter
- 67 5a;
- 68 (i) stalking, as described in Section 76-5-106.5;
- 69 (j) unlawful detention, as described in Section 76-5-304;
- 70 (k) violation of a protective order or ex parte protective order, as described in Section
- 71 76-5-108;
- 72 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
- 73 (m) possession of a deadly weapon with intent to assault, as described in Section
- 74 76-10-507; or
- 75 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 76 person, building, or vehicle, as described in Section 76-10-508.
- 77 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
- 78 be, or may have been subject to domestic violence or child abuse.

79 Section 2. Section **76-9-201** is amended to read:

80 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

81 (1) As used in this section:

82 (a) "Adult" means a person 18 years of age or older.

83 ~~[(a)]~~ (b) "Electronic communication" means any communication by electronic,

84 electro-mechanical, or electro-optical communication device for the transmission and

85 reception of audio, image, or text but does not include broadcast transmissions or similar

86 communications that are not targeted at any specific individual.

87 ~~(b)~~ (c) "Electronic communication device" includes telephone, facsimile, electronic
88 mail, or pager.

89 (d) "Minor" means a person who is younger than 18 years of age.

90 (2) A person is guilty of electronic communication harassment and subject to
91 prosecution in the jurisdiction where the communication originated or was received if with
92 intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the
93 electronic communications of another, the person:

94 (a) (i) makes repeated contact by means of electronic communications, whether or not
95 a conversation ensues; or

96 (ii) after the recipient has requested or informed the person not to contact the
97 recipient, and the person repeatedly or continuously:

98 (A) contacts the electronic communication device of the recipient; or

99 (B) causes an electronic communication device of the recipient to ring or to receive
100 other notification of attempted contact by means of electronic communication;

101 (b) makes contact by means of electronic communication and insults, taunts, or
102 challenges the recipient of the communication or any person at the receiving location in a
103 manner likely to provoke a violent or disorderly response;

104 (c) makes contact by means of electronic communication and threatens to inflict
105 injury, physical harm, or damage to any person or the property of any person; or

106 (d) causes disruption, jamming, or overload of an electronic communication system
107 through excessive message traffic or other means utilizing an electronic communication
108 device.

109 (3) (a) (i) Electronic communication harassment committed against an adult is a class
110 B misdemeanor[-], except under Subsection (3)(a)(ii).

111 (ii) A second or subsequent offense under Subsection (3)(a)(i) is a:

112 (A) class A misdemeanor if all prior violations of this section were committed against
113 adults; and

114 (B) a third degree felony if any prior violation of this section was committed against a
115 minor.

116 (b) (i) Electronic communication harassment committed against a minor is a class A
117 misdemeanor, except under Subsection (3)(b)(ii).

118 (ii) A second or subsequent offense under Subsection (3)(b)(i) is a third degree felony,
119 regardless of whether any prior violation of this section was committed against a minor or an
120 adult.

121 (4) (a) Except under Subsection (4)(b), criminal prosecution under this section does
122 not affect an individual's right to bring a civil action for damages suffered as a result of the
123 commission of any of the offenses under this section.

124 [~~4~~] (b) This section does not create any civil cause of action based on electronic
125 communications made for legitimate business purposes.