

1                   **ELECTRONIC COMMUNICATION HARASSMENT**

2                                   **AMENDMENT**

3   2009 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Jon J. Greiner**

6                                   House Sponsor: Paul Ray

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8 **LONG TITLE**

9 **General Description:**

10           This bill modifies the Criminal Code regarding electronic communication harassment  
11 by including the act of causing substantial emotional distress as a form of harassment  
12 and by amending the penalties.

13 **Highlighted Provisions:**

14           This bill:

- 15           ▶ defines "adult" and "minor";
- 16           ▶ expands the offense of electronic communication harassment to include acts  
17 intended to cause substantial emotional distress;
- 18           ▶ modifies the penalties for electronic communication harassment:
- 19               • by increasing the penalty for repeat offenses; and
- 20               • by providing a greater penalty if the victim is a minor;
- 21           ▶ clarifies that electronic harassment may create a civil cause of action if the  
22 electronic communications are not made for legitimate business purposes; and
- 23           ▶ amends a cross reference.

24 **Monies Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **31A-21-501**, as last amended by Laws of Utah 2001, Chapter 116

31 **76-9-201**, as last amended by Laws of Utah 2005, Chapter 128



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

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

35 **31A-21-501. Definitions.**

36 For purposes of this part:

37 (1) "Applicant" means:

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

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

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

- 44 (a) is or was a spouse of the other party;
- 45 (b) is or was living as if a spouse of the other party;
- 46 (c) is related by blood or marriage to the other party;
- 47 (d) has one or more children in common with the other party; or
- 48 (e) resides or has resided in the same residence as the other party.

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

- 51 (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
- 52 (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
- 53 (c) Subsections 76-9-702(1) through (4), Lewdness - Sexual battery; or
- 54 (d) Section 76-9-702.5, Lewdness Involving a Child.

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

59 offenses by one cohabitant against another:

- 60 (a) aggravated assault, as described in Section 76-5-103;
- 61 (b) assault, as described in Section 76-5-102;
- 62 (c) criminal homicide, as described in Section 76-5-201;
- 63 (d) harassment, as described in Section 76-5-106;
- 64 (e) [~~telephone~~] electronic communication harassment, as described in Section
- 65 76-9-201;
- 66 (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections
- 67 76-5-301, 76-5-301.1, and 76-5-302;
- 68 (g) mayhem, as described in Section 76-5-105;
- 69 (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, and Title 76, Chapter
- 70 5a;
- 71 (i) stalking, as described in Section 76-5-106.5;
- 72 (j) unlawful detention, as described in Section 76-5-304;
- 73 (k) violation of a protective order or ex parte protective order, as described in Section
- 74 76-5-108;
- 75 (l) any offense against property described in Title 76, Chapter 6, Part 1, 2, or 3;
- 76 (m) possession of a deadly weapon with intent to assault, as described in Section
- 77 76-10-507; or
- 78 (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any
- 79 person, building, or vehicle, as described in Section 76-10-508.
- 80 (5) "Subject of domestic abuse" means an individual who is, has been, may currently
- 81 be, or may have been subject to domestic violence or child abuse.

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

83 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

84 (1) As used in this section:

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

86 [~~(a)~~] (b) "Electronic communication" means any communication by electronic,  
87 electro-mechanical, or electro-optical communication device for the transmission and reception  
88 of audio, image, or text but does not include broadcast transmissions or similar  
89 communications that are not targeted at any specific individual.

90           ~~[(b)]~~ (c) "Electronic communication device" includes telephone, facsimile, electronic  
91 mail, or pager.

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

93           (2) A person is guilty of electronic communication harassment and subject to  
94 prosecution in the jurisdiction where the communication originated or was received if with  
95 intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, ~~§~~→ [cause substantial  
96 emotional distress,] ←~~§~~ or disrupt the electronic communications of another, the person:

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

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

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

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

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

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

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

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

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

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

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

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

120           (ii) A second or subsequent offense under Subsection (3)(b)(i) is a third degree felony.

121 regardless of whether any prior violation of this section was committed against a minor or an  
122 adult.

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

126 [~~4~~] (b) This section does not create any civil cause of action based on electronic  
127 communications made for legitimate business purposes.

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**Legislative Review Note**  
as of 8-6-08 8:03 AM

**Office of Legislative Research and General Counsel**

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**S.B. 91 - Electronic Communication Harassment Amendment**

**Fiscal Note**

2009 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require \$52,600 per year from the General Fund appropriated to the Courts beginning FY 2010. The bill will also generate \$49,500 per year in new General Fund revenue beginning FY 2010, for a net General Fund impact of \$3,100 per year

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$52,600	\$52,600	\$0	\$49,500	\$49,500
<b>Total</b>	<b>\$0</b>	<b>\$52,600</b>	<b>\$52,600</b>	<b>\$0</b>	<b>\$49,500</b>	<b>\$49,500</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments (Justice Courts) will lose \$1,400 annually in revenue.