

HB0239S01 compared with HB0239

~~deleted text~~ shows text that was in HB0239 but was deleted in HB0239S01.

inserted text shows text that was not in HB0239 but was inserted into HB0239S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

ONLINE IMPERSONATION PROHIBITION

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts and modifies provisions in the Utah Criminal Code related to electronic communication harassment and online impersonation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the actions that constitute electronic communication harassment and the associated penalties; and
- ▶ makes it a criminal offense, under certain circumstances, to impersonate an individual online with the intent to harm, defraud, intimidate, or threaten any individual.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-9-201, as last amended by Laws of Utah 2019, Chapter 420

ENACTS:

~~76-10-3201~~; 76-9-203, Utah Code Annotated 1953

~~76-10-3202~~, Utah Code Annotated 1953

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

Section 1. Section 76-9-201 is amended to read:

Part 2. Electronic Communication and Telephone Abuse

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

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

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

(c) "Electronic communication device" includes a telephone, a facsimile machine, electronic mail, a pager, a computer, or another device or medium that can be used to communicate electronically.

(d) "Minor" means an individual who is younger than 18 years of age.

(e) "Personal identifying information" means the same as that term is defined in Section 76-6-1102.

(2) [A] Except to the extent the person's conduct constitutes an offense under Section 76-9-203, a person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

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(a) (i) makes repeated contact by means of electronic communications, regardless of whether a conversation ensues; or

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

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

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

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

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

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

(3) A person ~~[who] is guilty of electronic communication harassment if the person:~~

~~(a) electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to abuse, threaten, or disrupt the other individual's electronic communication and without the other individual's permission [is guilty of electronic communication harassment. {~~

~~— }]; or~~

~~(b) sends a communication by electronic mail, instant message, or other similar means, if:~~

~~(i) the communication references personal identifying information of another individual; and~~

~~(ii) the person sends the communication:~~

~~(A) without the individual's consent; and~~

~~(B) with the intent to cause a recipient of the communication to reasonably believe that the individual authorized or sent the communication; and~~

~~(iii) with the intent to:~~

~~(A) cause an individual physical, emotional, or economic injury or damage; or~~

~~(B) defraud an individual.~~

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~~[(4)(a)(i) Electronic communication harassment committed against an adult is a class B misdemeanor, except under Subsection (4)(a)(ii).]~~

~~[(ii) A second or subsequent offense under Subsection (4)(a)(i) is:]~~

~~[(A) a class A misdemeanor if all prior violations of this section were committed against adults; and]~~

~~[(B) a third degree felony if a prior violation of this section was committed against a minor.]~~

~~[(b)(i) Electronic communication harassment committed against a minor is a class A misdemeanor, except as provided under Subsection (4)(b)(ii).]~~

~~[(ii) A second or subsequent offense under Subsection (4)(b)(i) is a third degree felony, regardless of whether a prior violation of this section was committed against a minor or an adult.]~~

(4)(a) Electronic communication harassment is a class B misdemeanor.

(b) A second or subsequent offense of electronic communication harassment is a class A misdemeanor.

(5)(a) Except as provided under Subsection (5)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of an offense under this section.

(b) This section does not create a civil cause of action based on electronic communications made for legitimate business purposes.

Section ~~{1}~~2. Section ~~{76-10-3201}~~76-9-203 is enacted to read:

~~{Part 32. Online Impersonation~~

~~—————76-10-3201. Definitions}~~ 76-9-203. Penalty for online impersonation.

(1) As used in this section:

(~~{1}~~) (a) "Commercial social networking website" means a person who operates a website that allows a person to register as a user for the purpose of:

(i) establishing a personal relationship with one or more other users through direct or real time communication with the other user; or

(ii) the creation of web pages or profiles available to the public or to other users.

(b) "Commercial social networking website" does not include an electronic mail program or a message board program.

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~~(2)(a) "Identifying information" means information that alone or in conjunction with other information identifies an individual.~~

~~— (b) "Identifying information" includes an individual's:~~

~~— (i) name;~~

~~— (ii) date of birth;~~

~~— (iii) phone number;~~

~~— (iv) unique biometric data, including the individual's fingerprint, voice print, or retina or iris image;~~

~~— (v) unique electronic identification number, address, routing code, or financial institution account number;~~

~~— (vi) telecommunication identifying information or access device; and~~

~~— (vii) social security number or other government issued identification number.~~

~~Section 2. Section 76-10-3202 is enacted to read:~~

~~**76-10-3202. Penalty for online impersonation.**~~

~~(1) It is a criminal offense for a person to use the name or persona of an individual:~~

~~(a) without the individual's consent;~~

~~(b) (i) to create a web page on a commercial social networking website or other website; or~~

~~(ii) to post or send a message on or through a commercial social networking website or other website, other than on or through an electronic mail program or message board program; and~~

~~(c) with the intent to harm, defraud, intimidate, or threaten any individual.~~

~~{ (2) It is a criminal offense for a person to send a communication by electronic mail, instant message, text message, or similar means, if:~~

~~— (a) the communication references identifying information belonging to an individual; and~~

~~— (b) the person sends the communication:~~

~~— (i) without the individual's consent;~~

~~— (ii) with the intent to cause a recipient of the communication to reasonably believe that the individual authorized or sent the communication; and~~

~~— (iii) with the intent to harm or defraud an individual.~~

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~~†~~ (3) ~~{(a)}~~ An offense ~~{described in Subsection (1)}~~ under this section is a third degree felony.

~~{~~ ~~(b) An offense described in Subsection (2) is:~~

~~—— (i) a class A misdemeanor; or~~

~~—— (ii) if the person commits the offense with the intent to solicit a response by emergency personnel, a third degree felony;~~

~~†~~ (4) It is a defense to prosecution under this section that the person is one of the following entities or that the person's conduct consisted solely of action taken as an employee of one of the following entities:

~~(a) a commercial social networking website;~~

~~(b) an Internet service provider;~~

~~(c) an interactive computer service, as defined in 47 U.S.C. Sec. 230;~~

~~(d) a telecommunications provider, as defined in Section 10-1-402;~~

~~(e) a cable television service; ~~{or}~~~~

~~(f) an entity that provides cable television service, as defined in Section 10-18-102 ~~{,}~~;~~

or

~~{5} Prosecution under this part does not prevent a prosecution under any other law.~~

~~†g) a law enforcement agency engaged in lawful practices.~~