

Representative Karianne Lisonbee proposes the following substitute bill:

ONLINE IMPERSONATION PROHIBITION

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Michael K. McKell

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:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



26 ENACTS:

27 [76-9-203](#), Utah Code Annotated 1953

28

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

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

31 **Part 2. Electronic Communication and Telephone Abuse**

32 **76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

33 (1) As used in this section:

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

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

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

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

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

45 (2) [A] Except to the extent the person's conduct constitutes an offense under Section
46 [76-9-203](#), a person is guilty of electronic communication harassment and subject to prosecution
47 in the jurisdiction where the communication originated or was received if with intent to
48 intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of
49 another, the person:

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

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

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

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

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

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

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

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

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

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

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

73 (ii) the person sends the communication:

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

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

77 (iii) with the intent to:

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

79 (B) defraud an individual.

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

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

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

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

87 ~~[(b) (i) Electronic communication harassment committed against a minor is a class A~~

88 ~~misdemeanor, except as provided under Subsection (4)(b)(ii).]~~

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

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

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

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

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

100 Section 2. Section **76-9-203** is enacted to read:

101 **76-9-203. Penalty for online impersonation.**

102 (1) As used in this section:

103 (a) "Commercial social networking website" means a person who operates a website
104 that allows a person to register as a user for the purpose of:

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

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

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

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

111 (a) without the individual's consent;

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

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

116 (c) with the intent to cause an individual to reasonably believe that the individual
117 whose name or persona is used authorized or performed the applicable action described in

118 Subsection (2)(b); and

- 119 (d) with the intent to harm, defraud, intimidate, or threaten any individual.
- 120 (3) (a) An offense under this section is a class A misdemeanor.
- 121 (b) A second or subsequent offense under this section is a third degree felony.
- 122 (4) It is a defense to prosecution under this section that the person is one of the
- 123 following entities or that the person's conduct consisted solely of action taken as an employee
- 124 of one of the following entities:
- 125 (a) a commercial social networking website;
- 126 (b) an Internet service provider;
- 127 (c) an interactive computer service, as defined in 47 U.S.C. Sec. 230;
- 128 (d) a telecommunications provider, as defined in Section [10-1-402](#);
- 129 (e) a cable television service;
- 130 (f) an entity that provides cable television service, as defined in Section [10-18-102](#); or
- 131 (g) a law enforcement agency engaged in lawful practices.