

## HB0239S02 compared with HB0239S01

~~text~~ shows text that was in HB0239S01 but was deleted in HB0239S02.

text shows text that was not in HB0239S01 but was inserted into HB0239S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Karianne Lisonbee proposes the following substitute bill:

### ONLINE IMPERSONATION PROHIBITION

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

Senate Sponsor: \_\_\_\_\_

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#### 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:

**76-9-203**, Utah Code Annotated 1953

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*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:

(a) (i) makes repeated contact by means of electronic communications, regardless of

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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.

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

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~~[(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 2. Section **76-9-203** is enacted to read:

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

(1) As used in this section:

(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.

(2) 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

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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;

(c) with the intent to cause an individual to reasonably believe that the individual whose name or persona is used authorized or performed the applicable action described in Subsection (2)(b); and

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

(3) (a) An offense under this section is a class A misdemeanor.

(~~f~~3)b) ~~f~~An A second or subsequent offense under this section is 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;

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

(g) a law enforcement agency engaged in lawful practices.