



Ohio Legislative Service Commission

Final Analysis

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Sub. H.B. 151

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(As Passed by the General Assembly)

Reps. Anielski, Grossman, LaTourette, Kraus, Dever, Blessing, Rogers, Brown, Butler, Antonio, Arndt, Ashford, Baker, Boose, Conditt, Cupp, Driehaus, Duffey, Ginter, Hambley, Hayes, Howse, T. Johnson, Koehler, Kunze, Landis, Leland, Manning, McClain, M. O'Brien, S. O'Brien, Patterson, Pelanda, Retherford, Schaffer, Scherer, Sears, Sheehy, Slaby, K. Smith, Sprague, Sweeney, Young, Rosenberger, Boyce

Sens. Eklund, Burke, Cafaro, Coley, Hackett, Hite, Hughes, LaRose, Lehner, Manning, Oelslager, Patton, Schiavoni, Tavares, Thomas, Uecker, Williams

Effective date: August 16, 2016

ACT SUMMARY

Menacing by stalking

- Expands the offense of "menacing by stalking" by additionally prohibiting:
 - (1) A person by engaging in a pattern of conduct from knowingly causing another person to believe that the offender will cause physical harm or mental distress to a family or household member of the other person;
 - (2) A person through the use of any form of written communication from posting a message or using any intentionally written or verbal graphic gesture to violate or urge or incite another person to violate the previously described prohibition;
 - (3) A person through the use of a telecommunications device from posting a message or using any intentionally written or verbal graphic gesture with either of the purposes described in (2).

Telecommunications harassment

- Modifies the offense of "telecommunications harassment" to also apply to communications made for the purpose of intimidation.

- Removes from the prohibition the requirement that the caller failed to identify the caller to the recipient of the telecommunication.
- Prohibits any person from knowingly making or causing to be made, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another if the caller does any of the following:
 - (1) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, or harass the recipient.
 - (2) Without a lawful business purpose, knowingly interrupts the telecommunication service of any person.
 - (3) Without a lawful business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device.
 - (4) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient or any family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the person.
 - (5) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person.
 - (6) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensively or repetitive manner.
- Prohibits a person from knowingly posting a text or audio statement or an image on an Internet website or webpage for the purpose of abusing, threatening, or harassing another person.
- Provides that the new telecommunications harassment prohibitions and a continuing prohibition regarding unwanted calls do not apply to a person employed or contracted by a specified type of news medium while gathering, editing, or disseminating information for the general public.
- Specifies that, with respect to conduct taken under a court order related to a telecommunications harassment investigation or prosecution, a provider of an "interactive computer service" will receive the same protection against causes of

action and the same immunity as a provider of a telecommunications service or information service.

- Specifies that the offense of telecommunications harassment does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control.
- Specifies that any person providing access or connection will not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of the offense of telecommunications harassment.
- Specifies that the two preceding provisions:
 - Do not create an affirmative duty for any person providing access or connection to block the receipt or transmission of any information that it believes is, or will be sent, in violation of the offense of telecommunications harassment except as otherwise provided by law; and
 - Do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of the offense of telecommunications harassment or who knowingly advertises the availability of material of that nature.
- Specifies that a provider or user of an interactive computer service must neither be treated as the publisher or speaker of any information provided by another information content provider nor held civilly or criminally liable for the creation or development of information provided by another information content provider.

CONTENT AND OPERATION

Menacing by stalking

Expansion of continuing offense

The act expands the offense of menacing by stalking in several ways.

An ongoing prohibition in the offense of menacing by stalking prohibits a person from engaging in a pattern of conduct that will cause another person to believe that the offender will cause physical harm or mental distress to the other person. The act expands this prohibition to prohibit a person, by engaging in a pattern of conduct, from knowingly causing another person to believe that the offender will cause physical harm

or mental distress to a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm or mental distress to the other person's family or household member, the belief or mental distress may be based on the offender's words or conduct that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.¹

A prohibition largely retained by the act prohibited a person from using any electronic method of remotely transmitting information, including a computer or network, from posting a message urging or inciting another to commit such a violation. The act expands this prohibition to prohibit a person, through the use of any form of written communication, including by the use of a telecommunications device, from using any intentionally written or verbal graphic gesture with purpose to either commit a violation, or to urge or incite another to commit a violation, of the prohibition described in the preceding paragraph.²

Ongoing law prohibits violating either prohibition described above with a sexual motivation. The act applies the law to the amended prohibitions.³

Exemptions and penalties

Continuing exemptions from the prohibitions described below and the continuing penalties apply with respect to the expanded prohibitions under the act.

Continuing law generally specifies that the offense of menacing by stalking does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities incidental to providing such access or connection, and that do not include the creation of the content of the material that is the subject of the access or connection. Any person providing such access or connection is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of any prohibition under the offense, and does not have an affirmative duty to block such receipt or transmission.⁴

¹ R.C. 2903.211(A)(1).

² R.C. 2903.211(A)(2).

³ R.C. 2903.211(A)(3).

⁴ R.C. 2903.211(F).



Menacing by stalking generally is a first degree misdemeanor. If any of nine specified conditions are present, including a prior conviction of menacing by stalking or aggravated trespass, specified condition of committing the offense, specified type of victim, or specified type of offender, the offense is a fourth degree felony. If the victim is an officer or employee of a public children services agency or private child placing agency, the offense is a fourth or fifth degree felony depending upon the circumstances of the offense.⁵

Definitions

The act defines the following terms used in the provisions described above:⁶

"Family or household member" means either of the following:

(1) Any of the following who is residing or has resided with the victim of menacing by stalking:

(a) A spouse, a person living as a spouse, or a former spouse of the victim;

(b) A parent, a foster parent, or a child of the victim, or another person related by consanguinity or affinity to the victim;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the victim, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the victim.

(2) The natural parent of any child of whom the victim is the natural or putative other natural parent.

"Person living as a spouse" means a person who is living or has lived with the victim of menacing by stalking in a common law marital relationship, who otherwise is cohabiting with the victim, or who otherwise has cohabited with the victim within five years prior to the date of the alleged commission of the offense.

The act largely retains the former definition of "**pattern of conduct.**" As amended by the act, the definition also includes the use of intentionally written or verbal graphic gestures and the use of any form of written communication.

⁵ R.C. 2903.211(B).

⁶ R.C. 2903.211(D) (1), (11) and (12).



Telecommunications harassment

The act expands the offense of telecommunications harassment in several ways and makes other changes related to that offense.

Modification of continuing prohibition

The act generally retains a prohibition under the offense of telecommunications harassment that prohibits any person from knowingly making, causing, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller makes the telecommunication with purpose to harass, intimidate, or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient. The act also prohibits telecommunications made with the purpose to intimidate, and eliminates as an element of the crime a requirement that the caller failed to identify the caller to the recipient.⁷

The act adds six additional prohibited actions to the offense of telecommunications harassment. It prohibits any person from knowingly making, causing, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:⁸

(1) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, or harass the recipient.

(2) Without a lawful business purpose, knowingly interrupts the telecommunication service of any person.

(3) Without a lawful business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device.

(4) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient or any family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient.

⁷ R.C. 2917.21(A)(1).

⁸ R.C. 2917.21(A)(6) to (11).



(5) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person.

(6) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensively or repetitive manner.

New prohibition

Additionally, the act adds a new provision that prohibits a person from knowingly posting a text or audio statement or an image on an Internet website or webpage for the purpose of abusing, threatening, or harassing another person.⁹

Definitions and penalty

For purposes of the added provision described in (4), above, the act uses essentially the same definitions of "family or household member" and "person living as a spouse" as it does for menacing by stalking.¹⁰

The act retains the penalty for a violation of the ongoing prohibition described above, as modified by the act (a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense), and applies that penalty to a violation of the new prohibition.¹¹

Journalist exemption

The act provides a journalist exemption from: (1) the additional prohibitions added by the act, and (2) the ongoing prohibition against knowingly making, causing, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller knowingly makes the telecommunication to the recipient, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.

Under the exemption, those prohibitions do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is

⁹ R.C. 2917.21(B)(2).

¹⁰ R.C. 2917.21(G)(5) and (6).

¹¹ R.C. 2917.21(C)(2).



gathering, processing, transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment contractual authority in that capacity. For this exemption, the act uses the definition of "cable operator" found in the Video Service Law.¹²

Prohibition on cause of action and immunity from civil or criminal liability

Prohibition and immunity

Under the act, no cause of action may be asserted in any court in Ohio against any provider of an "interactive computer service," or against any officer, employee, or agent of an interactive computer service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is related to the investigation or prosecution of an alleged violation of any prohibition under the offense of telecommunications harassment.

Additionally, a provider of an interactive computer service, or an officer, employee, or agent of an interactive computer service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is related to the investigation or prosecution of an alleged violation of any prohibition under the offense of telecommunications harassment.

These are the same protections against causes of action and the same civil and criminal immunity that are afforded under continuing law to any provider of a telecommunications service or information service or any officer, employee, or agent of a telecommunications service or information service.¹³

Interactive computer service and other relevant definitions

The act defines "interactive computer service" as in section 230 of Title 47 of the U. S. Code, which provides the following definitions of terms:¹⁴

"Interactive computer service" means any information service, system, or access software provider (see below) that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides

¹² R.C. 2917.21(F), and R.C. 2917.21(G)(7), by reference to R.C. 1332.21, which is not in the act.

¹³ R.C. 2917.21(D).

¹⁴ 47 U.S.C. § 230.



access to the Internet (see below) and such systems operated or services offered by libraries or educational institutions.

"Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"Access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following: (1) filter, screen, allow, or disallow content, (2) pick, choose, analyze, or digest content, or (3) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

"Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

Persons providing access or connection

The act specifies that the offense of telecommunications harassment does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing the access or connection, and that do not include the creation of the content of the material that is the subject of the access or connection. Any person providing the access or connection is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of any prohibition under the offense.¹⁵

Additionally, the act specifies that the above provisions (1) do not create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of any prohibition under the offense of telecommunications harassment except as otherwise provided by law, and (2) do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of any prohibition under the offense of telecommunications harassment or who knowingly advertises the availability of material of that nature.¹⁶

¹⁵ R.C. 2917.21(E)(1).

¹⁶ R.C. 2917.21(E)(2) and (3).



Under the act, a provider or user of an "interactive computer service" must neither be treated as the publisher or speaker of any information provided by another "information content provider" (see definitions above), nor held civilly or criminally liable for the creation or development of information provided by another information content provider. Nothing in the above provision may be construed to protect a person from liability to the extent that the person developed or created any content in violation of the prohibition on telecommunications harassment.¹⁷

HISTORY

ACTION	DATE
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Reported, H. Judiciary	05-27-15
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Passed Senate (33-0)	04-13-16
House concurred in Senate amendments (96-0)	04-20-16

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¹⁷ R.C. 2917.21(E)(4).

