

SENATE AMENDMENTS

2nd Printing

By: McCall, Castro, Orr

H.B. No. 2003

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of online harassment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 33, Penal Code, is amended by adding Section 33.07 to read as follows:

Sec. 33.07. ONLINE HARASSMENT. (a) A person commits an offense if the person uses the name or persona of another person to create a web page on or to post one or more messages on a commercial social networking site:

(1) without obtaining the other person's consent; and
(2) with the intent to harm, defraud, intimidate, or threaten any person.

(b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:

(1) without obtaining the other person's consent;
(2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and

(3) with the intent to harm or defraud any person.

(c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor

1 commits the offense with the intent to solicit a response by
2 emergency personnel.

3 (d) If conduct that constitutes an offense under this
4 section also constitutes an offense under any other law, the actor
5 may be prosecuted under this section, the other law, or both.

6 (e) It is a defense to prosecution under this section that
7 the actor's conduct consisted solely of action taken as an employee
8 of:

9 (1) a commercial social networking site;

10 (2) an Internet service provider;

11 (3) an interactive computer service, as defined by 47
12 U.S.C. Section 230;

13 (4) a telecommunications provider, as defined by
14 Section 51.002, Utilities Code; or

15 (5) a video service provider or cable service
16 provider, as defined by Section 66.002, Utilities Code.

17 (f) In this section:

18 (1) "Commercial social networking site" means any
19 business, organization, or other similar entity operating a website
20 that permits persons to become registered users for the purpose of
21 establishing personal relationships with other users through
22 direct or real-time communication with other users or the creation
23 of web pages or profiles available to the public or to other users.
24 The term does not include an electronic mail program or a message
25 board program.

26 (2) "Identifying information" has the meaning
27 assigned by Section 32.51.

1 SECTION 2. This Act takes effect September 1, 2009.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 23 2009

Atty. Gen. Spaw
Secretary of the Senate

BY: *Seligson*

1 Amend H.B. 2003 (Senate committee printing) by adding the
2 following appropriately numbered SECTIONS and renumbering any
3 subsequent SECTIONS of the bill accordingly:

4 SECTION __. Section 33.01, Penal Code, is amended by
5 adding Subdivision (10-a) to read as follows:

6 (10-a) "Critical infrastructure facility" means:

7 (A) a chemical manufacturing facility;

8 (B) a refinery;

9 (C) an electrical power generating facility,
10 substation, switching station, electrical control center, or
11 electrical transmission or distribution facility;

12 (D) a water intake structure, water treatment
13 facility, wastewater treatment plant, or pump station;

14 (E) a natural gas transmission compressor
15 station;

16 (F) a liquid natural gas terminal or storage
17 facility;

18 (G) a facility owned or operated by a
19 telecommunications provider, as defined by Section 51.002,
20 Utilities Code, including a telecommunications central switching
21 office;

22 (H) a port, railroad switching yard, trucking
23 terminal, or other freight transportation facility;

24 (I) a gas processing plant, including a plant
25 used in the processing, treatment, or fractionation of natural
26 gas; or

27 (J) a transmission facility used by a federally
28 licensed radio or television station.

29 (K) a cable television or video service provider

1 headend.

2 SECTION __. Section 33.02, Penal Code, is amended by
3 amending Subsections (b) and (d) and adding Subsections (b-1)
4 and (b-2) to read as follows:

5 (b) An offense under Subsection (a) [~~this section~~] is a
6 Class B misdemeanor, except that the offense is a state jail
7 felony if:

8 (1) the defendant has been previously convicted two
9 or more times of an offense under this chapter; or

10 (2) the computer, computer network, or computer
11 system is owned by the government or a critical infrastructure
12 facility.

13 (b-1) A person commits an offense if with the intent to
14 obtain [~~unless in committing the offense the actor knowingly~~
15 ~~obtains~~] a benefit, defraud [~~defrauds~~] or harm [~~harms~~] another,
16 or alter [~~alters~~], damage [~~damages~~], or delete [~~deletes~~]
17 property, the person knowingly accesses a computer, computer
18 network, or computer system without the effective consent of the
19 owner.

20 (b-2) An offense under Subsection (b-1) [~~in which event~~
21 ~~the offense~~] is:

22 (1) [~~a Class A misdemeanor if the aggregate amount~~
23 ~~involved is less than \$1,500,~~

24 [~~+~~2] a state jail felony if:

25 [~~A~~] the aggregate amount involved is [~~\$1,500 or~~
26 ~~more but~~] less than \$20,000[~~+~~ or

27 [~~B~~] ~~the aggregate amount involved is less than~~
28 ~~\$1,500 and the defendant has been previously convicted two or~~
29 ~~more times of an offense under this chapter];~~

30 (2) [~~+~~3] a felony of the third degree if the
31 aggregate amount involved is \$20,000 or more but less than

1 \$100,000;

2 (3) [~~(4)~~] a felony of the second degree if:

3 (A) the aggregate amount involved is \$100,000 or
4 more but less than \$200,000; or

5 (B) the aggregate amount involved is any amount
6 less than \$200,000 and the computer, computer network, or
7 computer system is owned by the government or a critical
8 infrastructure facility; or

9 (4) [~~(5)~~] a felony of the first degree if the
10 aggregate amount involved is \$200,000 or more.

11 (d) A person who is [~~his~~] subject to prosecution under
12 this section and any other section of this code may be
13 prosecuted under either or both sections.

14 SECTION __. The change in law made by this Act applies
15 only to an offense committed on or after the effective date of
16 this Act. An offense committed before the effective date of
17 this Act is covered by the law in effect when the offense was
18 committed, and the former law is continued in effect for that
19 purpose. For purposes of this section, an offense was committed
20 before the effective date of this Act if any element of the
21 offense occurred before that date.

22 SECTION __. This Act takes effect September 1, 2009.

ADOPTED

MAY 23 2009

FLOOR AMENDMENT NO. 2

Atay Spaw
Secretary of the Senate

BY:

Thurk Dutton

1 Amend C.S.H.B. No. 2003 (house committee printing) on page 2,
2 lines 7-8, by striking "the actor's conduct consisted solely of
3 action taken as an employee of" and substitute "the actor is any of
4 the following entities or that the actor's conduct consisted solely
5 of action taken as an employee of any of the following entities".

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of Online Harassment. Under the provisions of the bill using the name or persona of another person on social networking sites without the person's consent would be punishable as a third degree felony. The bill would make using identifying information belonging to another person to send certain electronic communication punishable as a Class A misdemeanor and provide for punishment enhancement to that of a third degree felony if the offense was committed with the intent to solicit a response by emergency personnel.

The bill would also amend the Penal Code by defining "critical infrastructure facility." The bill would provide that the offense of breach of computer security would be punishable as a state jail felony if the defendant has been previously convicted two or more times of the offense, or if the computer system is owned by the government or a critical infrastructure facility. The offense of breach of security would be punishable as a state jail felony if the aggregate amount involved in the offense is less than \$20,000. The offense of breach of security would be punishable as a felony of the second degree if the aggregate amount involved is less than \$200,000 and the computer, computer network, or computer system is owned by the government or a critical infrastructure facility. Under current statute, the offense of breach of computer security is punishable at all offense levels and depends on the dollar amount of the loss.

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, ESi

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.), As
Engrossed

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of Online Harassment. Under the provisions of the bill using the name or persona of another person on social networking sites without the person's consent would be punishable as as a third degree felony. The bill would make using identifying information belonging to another person to send certain electronic communication punishable as a Class A misdemeanor and provide for punishment enhancement to that of a third degree felony if the offense was committed with the intent to solicit a response by emergency personnel.

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 19, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code by creating the offense of Online Harassment. Under the provisions of the bill using the name or persona of another person on social networking sites without the person's consent would be punishable as as a third degree felony. The bill would make using identifying information belonging to another person to send certain electronic communication punishable as a Class A misdemeanor and provide for punishment enhancement to that of a third degree felony if the offense was committed with the intent to solicit a response by emergency personnel.

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 21, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.), **As Introduced**

No significant fiscal implication to the State is anticipated.

This bill would amend the Penal Code creating the offense of Online Harassment. The offense would be punishable as a Class A Misdemeanor and provide for punishment enhancement to that of a third degree felony if the actor commits the offense with the intent to harm or defraud another.

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM, TP

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.), As Engrossed

The bill would amend the Penal Code by creating the offense of Online Harassment. Under the provisions of the bill using the name or persona of another person on social networking sites without the person's consent would be punishable as as a third degree felony. The bill would make using identifying information belonging to another person to send certain electronic communication punishable as a Class A misdemeanor and provide for punishment enhancement to that of a third degree felony if the offense was committed with the intent to solicit a response by emergency personnel.

A Class A misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

For this analysis it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 19, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.),
Committee Report 1st House, Substituted

The bill would amend the Penal Code by creating the offense of Online Harassment. Under the provisions of the bill using the name or persona of another person on social networking sites without the person's consent would be punishable as a third degree felony. The bill would make using identifying information belonging to another person to send certain electronic communication punishable as a Class A misdemeanor and provide for punishment enhancement to that of a third degree felony if the offense was committed with the intent to solicit a response by emergency personnel.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

For this analysis it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2003 by McCall (Relating to the creation of the offense of online harassment.), **As Introduced**

This bill would amend the Penal Code creating the offense of Online Harassment. The offense would be punishable as a Class A Misdemeanor and provide for punishment enhancement to that of a third degree felony if the actor commits the offense with the intent to harm or defraud another.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

For this analysis it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

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