

WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2011

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 213

(SENATORS FOSTER, KESSLER (ACTING PRESIDENT),
CHAFIN, JENKINS, LAIRD, MINARD, PALUMBO,
SNYDER, WILLIAMS, HALL, UNGER, BROWNING, WELLS,
STOLLINGS, PLYMALE, PREZIOSO, MILLER, YOST,
KLEMPA AND BEACH, ORIGINAL SPONSORS)

[PASSED MARCH 11, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 213

OFFICE OF THE
SECRETARY OF STATE

2011 APR -5 PM 5:05

FILED

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HALL, UNGER, BROWNING, WELLS, STOLLINGS, PLYMALE, PREZIOSO, MILLER,
YOST, KLEMPA AND BEACH, *original sponsors*)

[Passed March 11, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended, and to amend and reenact §61-8-16 of said code, all relating to crimes using computers, telephones and electronic communications devices; creating offenses for the unlawful transmission of obscene, anonymous, harassing and threatening communications and data by mobile phone, personal digital assistant or other electronic communications device; clarifying provisions pertaining to the unlawful obscene, anonymous, harassing and threatening communications by traditional voice communication by telephone; creating a felony offense for certain repeat offenses using a computer, mobile phone or other electronic communications device; definitions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER AND ELECTRONIC COMMUNICATIONS DEVICE CRIME AND ABUSE ACT.

§61-3C-14a. Obscene, anonymous, harassing and threatening communications by computer, cell phones and electronic communication devices; penalty.

1 (a) It is unlawful for any person, with the intent to harass
2 or abuse another person, to use a computer, mobile phone,
3 personal digital assistant or other electronic communication
4 device to:

5 (1) Make contact with another without disclosing his or her
6 identity with the intent to harass or abuse;

7 (2) Make contact with a person after being requested by
8 the person to desist from contacting them;

9 (3) Threaten to commit a crime against any person or
10 property; or

11 (4) Cause obscene material to be delivered or transmitted
12 to a specific person after being requested to desist from
13 sending such material.

14 (b) For purposes of this section:

15 (1) "Electronic communication device" means and includes
16 a telephone, wireless phone, computer, pager or any other
17 electronic or wireless device which is capable of transmitting
18 a document, image, voice, e-mail or text message using such
19 device in an electronic, digital or analog form from one
20 person or location so it may be viewed or received by another
21 person or persons at other locations.

22 (2) "Use of a computer, mobile phone, personal digital
23 assistant or other electronic communication device" in-
24 cludes, but is not limited to, the transmission of text mes-
25 sages, electronic mail, photographs, videos, images or other
26 nonvoice data by means of an electronic communication
27 system, and includes the transmission of such data, docu-
28 ments, messages and images to another's computer, e-mail
29 account, mobile phone, personal digital assistant or other
30 electronic communication device.

31 (3) "Obscene material" means material that:

32 (A) An average person, applying contemporary adult
33 community standards, would find, taken as a whole, appeals
34 to the prurient interest, is intended to appeal to the prurient
35 interest, or is pandered to a prurient interest;

36 (B) An average person, applying contemporary adult
37 community standards, would find, depicts or describes, in a
38 patently offensive way, sexually explicit conduct consisting
39 of an ultimate sexual act, normal or perverted, actual or
40 simulated, an excretory function, masturbation, lewd
41 exhibition of the genitals, or sadomasochistic sexual abuse;
42 and

43 (C) A reasonable person would find, taken as a whole, lacks
44 literary, artistic, political or scientific value.

45 (c) It is unlawful for any person to knowingly permit a
46 computer, mobile phone or personal digital assistant or other
47 electronic communication device under his or her control to
48 be used for any purpose prohibited by this section.

49 (d) Any offense committed under this section may be
50 determined to have occurred at the place at which the
51 contact originated or the place at which the contact was
52 received or intended to be received.

53 (e) Any person who violates a provision of this section is
54 guilty of a misdemeanor and, upon conviction thereof, shall

55 be fined not more than \$500 or confined in jail not more than
56 six months, or both fined and confined. For a second or
57 subsequent offense, the person is guilty of a misdemeanor
58 and, upon conviction thereof, shall be fined not more than
59 \$1,000 or confined in jail for not more than one year, or both
60 fined and confined.

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DE-
CENCY.**

**§61-8-16. Obscene, anonymous, harassing, repeated and threaten-
ing telephone calls; penalty.**

1 (a) It is unlawful for any person with intent to harass or
2 abuse another by means of telephone to:

3 (1) Make any comment, request, suggestion or proposal
4 which is obscene; or

5 (2) Make a telephone call, whether or not conversation
6 ensues, without disclosing his or her identity and with intent
7 to harass any person at the called number; or

8 (3) Make or cause the telephone of another repeatedly or
9 continuously to ring, with intent to harass any person at the
10 called number; or

11 (4) Make repeated telephone calls, during which conversa-
12 tion ensues, with intent to harass any person at the called
13 number; or

14 (5) Threaten to commit a crime against any person or
15 property.

16 (b) It shall be unlawful for any person to knowingly permit
17 any telephone under his or her control to be used for any
18 purpose prohibited by this section.

19 (c) Any offense committed under this section may be
20 deemed to have occurred at the place at which the telephone

21 call was made, or the place at which the telephone call was
22 received.

23 (d) Any person who violates any provision of this section is
24 guilty of a misdemeanor and, upon conviction thereof, shall
25 be fined not more than \$500, or confined in jail not more
26 than six months, or both fined and confined.

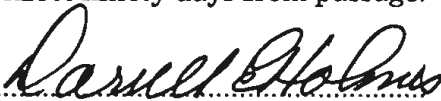
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

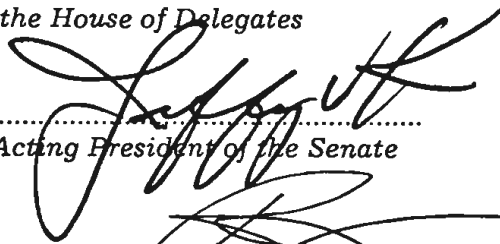

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Chairman House Committee

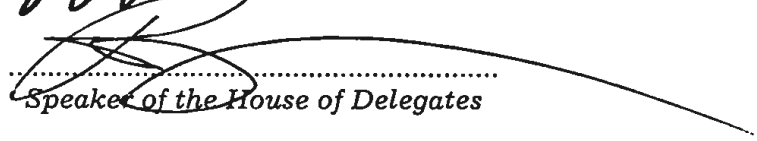
Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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Acting President of the Senate


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Speaker of the House of Delegates

The within *is approved* this the *24*
Day of *April*, 2011.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 22 2011

Time 3:45 pm