



# Ohio Legislative Service Commission

## Bill Analysis

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### **S.B. 145**

131st General Assembly  
(As Introduced)

**Sens.** Eklund, Hite, Jones, Patton, Beagle

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### **BILL SUMMARY**

- Expands the offense of "menacing by stalking" by adding additional prohibitions.
- Modifies and expands the offense of "telecommunications harassment."
- Provides that the new telecommunications harassment prohibitions and an existing prohibition in that offense regarding calls made to a person or premises when the recipient previously told the caller not to make a telecommunication to those premises, do not apply to a person employed or contracted by a specified type of news medium while gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.
- Specifies that, with respect to conduct taken under a court order issued in relation to a telecommunications harassment investigation or prosecution, a provider of an interactive computer service and any officer, employee, or agent of an interactive computer service will receive the same protection against causes of action and receive the same civil and criminal immunity as a provider of a telecommunications service or information service, or any officer, employee, or agent of a telecommunication 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 to or from an electronic method of remotely transferring information not under that person's control 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 any prohibition under the offense of telecommunications harassment.

- Specifies that the provisions discussed in the two preceding dot points 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 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.
- 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.
- Increases the penalty for the offense of "assault" to a fourth degree felony when the victim is a volunteer firefighter.
- Corrects a cross-reference in the theft statute to special purchase articles.

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## CONTENT AND OPERATION

### Menacing by stalking

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



Under the bill, a person must not engage in a pattern of conduct that knowingly causes another person to believe that the offender will cause physical harm or mental distress to a family or household member of the other person. Existing law prohibits 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 the other person.<sup>1</sup>

Under the bill, a person must not, through the use of any form of written communication or any electronic method of remotely transferring information, including any computer, computer network, computer program, computer system, or telecommunications device, by posting a message or by using any intentionally written or verbal graphic gesture with purpose to do either of the following: (1) commit a violation of the prohibition described in the preceding paragraph, or (2) urge or incite another to commit a violation of the prohibition described in the preceding paragraph.<sup>2</sup> Existing law prohibits a person, through the use of any electronic method of remotely transferring information, including any computer, computer network, computer program, or computer system, from posting a message with purpose to urge or incite another to commit a violation of the prohibition described in the preceding paragraph.

Continuing law prohibits violating either prohibition described above with a sexual motivation.<sup>3</sup>

The existing prohibitions do not apply in specified circumstances that pertain to the provision of access or connection to or from an electronic method of remotely transferring information. A violation of any of the existing prohibitions is the offense of menacing by stalking, which 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. The existing exemptions and penalties apply with respect to the expanded prohibitions under the bill.<sup>4</sup>

The bill defines the following terms used in the provisions described above:

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<sup>1</sup> R.C. 2903.211(A)(1).

<sup>2</sup> R.C. 2903.211(A)(2).

<sup>3</sup> R.C. 2903.211(A)(3).

<sup>4</sup> R.C. 2903.211(B).



**"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.

Existing law, unchanged by the bill except where indicated by language in italics in the definition of "pattern of conduct," which is added by the bill, defines the following terms used in the provisions described above and in this analysis:<sup>5</sup>

**"Pattern of conduct"** means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, *use of intentionally written or verbal graphic gestures*, or receipt of information or data through the use of *any form of written communication* or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

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<sup>5</sup> R.C. 2903.211(D).

## Telecommunications harassment

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

### Prohibition and penalty

#### Operation of the bill

The bill modifies an existing prohibition by changing the existing prohibited actions described below in (1) under that prohibition and adding six prohibited actions, as follows:

(1) Under the bill, the prohibited action described in (1) below under the first prohibition is modified such that a person is guilty of telecommunications harassment if the caller knowingly makes the telecommunication (regardless of whether the caller reveals the caller's identity to the recipient) with purpose to harass, *intimidate* (added by the bill), 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.<sup>6</sup>

(2) The bill's six additional prohibited actions added to the first prohibition prohibit any person from knowingly making or causing to be made a telecommunication or knowingly 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:<sup>7</sup>

(a) 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.

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

(c) 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.

(d) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of the recipient of the

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<sup>6</sup> R.C. 2917.21(A)(1).

<sup>7</sup> R.C. 2917.21(A)(6) to (11).



telecommunication or any family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient.

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

(f) 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.

Additionally, the bill expands the offense of telecommunications harassment adding a new prohibition 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.<sup>8</sup>

For purposes of (d), above, the bill uses essentially the same definitions of "family or household member" and "person living as a spouse" as it does for menacing by stalking.<sup>9</sup>

The bill retains the existing penalty for a violation of the first existing prohibition listed above, as modified by the bill (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 prohibitions it enacts.<sup>10</sup>

### **Existing law**

Existing law prohibits any person from knowingly making or causing to be made a telecommunication, or knowingly 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:<sup>11</sup>

(1) Fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass 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;

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<sup>8</sup> R.C. 2917.21(B)(2).

<sup>9</sup> R.C. 2917.21(G)(5) and (6).

<sup>10</sup> R.C. 2917.21(C)(2).

<sup>11</sup> R.C. 2917.21(A).

(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made;

(3) During the telecommunication, violates the aggravated menacing law;

(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;

(5) Knowingly makes the telecommunication to the recipient of the telecommunication, 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.

Additionally, existing law, unchanged by the bill, prohibits any person from making or causing to be made a telecommunication, or permitting a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.<sup>12</sup>

A violation of either prohibition described above is the offense of telecommunications harassment. The offense generally is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense, but a violation of the portion of the prohibition described in (4) above is a third, fourth, or fifth degree felony on any offense, depending upon the amount of economic harm resulting from the violation.<sup>13</sup>

### **Journalist exemption**

The bill provides a journalist exemption from: (1) the additional prohibitions added by the bill as described above, and (2) the existing prohibition against knowingly making or causing to be made a telecommunication, or knowingly permitting a

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<sup>12</sup> R.C. 2917.21(B).

<sup>13</sup> R.C. 2917.21(C).



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 of the telecommunication, 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 gathering, processing, transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment in that capacity or the person's contractual authority in that capacity. For purposes of this exemption, the bill uses an existing Video Service Law definition of "cable operator."<sup>14</sup>

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

The bill specifies that a provider of an interactive computer service as that term is defined in section 230 of Title 47 of the United States Code (see "**Interactive computer service definitions**," below) and any officer, employee, or agent of an interactive computer service will receive the same protection against causes of action and the same civil and criminal immunity as are afforded to the specified providers and persons under the provisions described in the following paragraph.

Under existing law, no cause of action may be asserted in any court in Ohio against any provider of a telecommunications service or information service, or against any officer, employee, or agent of a telecommunication service or information 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 issued in relation to the investigation or prosecution of an alleged violation of any prohibition under telecommunications harassment. Additionally, a provider of a telecommunications service or information service, or an officer, employee, or agent of a telecommunications service or information 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 issued in relation to the investigation or

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<sup>14</sup> R.C. 2917.21(F), and R.C. 2917.21(G)(7), by reference to R.C. 1332.21, which is not in the bill.





prosecution of an alleged violation of any prohibition under telecommunications harassment.<sup>15</sup>

### **Persons providing access or connection to or from an electronic method of remotely transferring information**

The bill 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 access or connection to or from the electronic method of remotely transferring the information, 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 access or connection to or from an electronic method of remotely transferring information not under that person's control 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 any prohibition under the offense.<sup>16</sup>

Additionally, the bill specifies that the provisions discussed in the preceding paragraph 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 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.<sup>17</sup>

Under the bill, a provider or user of an interactive computer service, as defined in section 230 of Title 47 of the United States Code, must neither be treated as the publisher or speaker of any information provided by another information content provider, as defined in section 230 of Title 47 of the United States Code (see "**Interactive computer service definitions**," below), nor held civilly or criminally liable for the creation or development of information provided by another information content provider. Nothing in the provision described in the prior sentence may be construed to

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<sup>15</sup> R.C. 2917.21(D).

<sup>16</sup> R.C. 2917.21(E)(1).

<sup>17</sup> R.C. 2917.21(E)(2) and (3).



protect a person from liability to the extent that the person developed or created any content in violation of the prohibition on telecommunications harassment.<sup>18</sup>

### **Interactive computer service definitions**

Section 230 of Title 47 of the U.S. Code provides the following definitions of terms that are used in the bill:<sup>19</sup>

*"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 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 (see below) 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 non-Federal interoperable packet switched data networks.

### **Penalty for assault of a volunteer firefighter**

The bill provides that the offense of "assault" is a fourth degree felony if the victim of the offense is a volunteer firefighter who the offender knew or should have known was either a firefighter or a volunteer firefighter while in the performance of the victim's official duties.<sup>20</sup> As used in this provision, "volunteer firefighter" means both of the following:<sup>21</sup> (1) a duly appointed member of a fire department on either a nonpay or part-pay basis who is ineligible to be a member of the Ohio Police and Fire Pension Fund, or whose employment as a firefighter does not in itself qualify any such person

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<sup>18</sup> R.C. 2917.21(E)(4).

<sup>19</sup> 47 U.S.C. § 230.

<sup>20</sup> R.C. 2903.13(C)(5)(b).

<sup>21</sup> R.C. 2903.13(D)(21), by reference to R.C. 146.01, which is not in the bill.



for membership in the Public Employees Retirement System, or who has waived membership in the Public Employees Retirement System, or (2) firefighters drafted, requisitioned, or appointed to serve in an emergency.

Under existing law, unchanged by the bill, the prohibitions under the offense of assault prohibit a person from knowingly causing or attempting to cause physical harm to another or to another's unborn or recklessly causing serious physical harm to another or to another's unborn. Currently, assault generally is a first degree misdemeanor, but it is a fourth degree felony if it is committed against a "firefighter" (see below) or a person performing "emergency medical service" (see below), while in the performance of the victim's official duties, and in a number of other specified circumstances it is a third, fourth, or fifth degree felony.<sup>22</sup>

### **Theft of special purchase article**

The bill corrects a cross-reference in the theft statute to "special purchase articles."

The bill corrects the reference so that the provision states that if the property stolen in a violation of the prohibition under the theft statute is a special purchase article, and the value of the property is less than the specified amount in the specified circumstances, the violation is the offense of "theft of a special purchase article or articles, a fifth degree felony. Current law specifies that if the property stolen in a violation of the prohibition under the theft statute is a special purpose article and the value of the property is less than \$7,500 or less than \$1,000 when the victim of the violation is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, the violation is the offense of "theft of a special purpose article or articles," a fifth degree felony. However, ongoing law does not define the term "special *purpose* article" – rather, it defines the term "special *purchase* article."<sup>23</sup>

For purposes of laws pertaining to scrap metal dealers, "special purchase article" includes various metal items, such as beer kegs, cable, wire, electrical components, and other equipment used in providing cable service or any utility service, grave markers, guard rails, and street signs.<sup>24</sup>

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<sup>22</sup> R.C. 2903.13.

<sup>23</sup> R.C. 2913.02(B)(9).

<sup>24</sup> R.C. 4734.04, which is not in the bill.

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## HISTORY

ACTION

DATE

Introduced

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