

SUBSTITUTE FOR
HOUSE BILL NO. 6052

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 411s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 411S. (1) A PERSON SHALL NOT POST A MESSAGE THROUGH
2 THE USE OF ANY MEDIUM OF COMMUNICATION, INCLUDING THE INTERNET OR
3 A COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NET-
4 WORK, OR OTHER ELECTRONIC MEDIUM OF COMMUNICATION, WITHOUT THE
5 VICTIM'S CONSENT, IF ALL OF THE FOLLOWING APPLY:
6 (A) THE PERSON KNOWS THAT CONDUCT ARISING FROM POSTING THE
7 MESSAGE COULD CAUSE CONTINUING OR REPEATED SEPARATE NONCONTINUOUS
8 ACTS OF UNCONSENTED CONTACT WITH THE VICTIM OR A MEMBER OF HIS OR
9 HER IMMEDIATE FAMILY BY INDIVIDUALS OR A SERIES OF 3 OR MORE
10 SEPARATE NONCONTINUOUS ACTS OF REPEATED OR CONTINUING UNCONSENTED
11 CONTACT WITH THE VICTIM BY AN INDIVIDUAL, OR BOTH.

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1 (B) POSTING THE MESSAGE IS INTENDED TO CAUSE CONDUCT THAT
2 WOULD MAKE THE VICTIM FEEL TERRORIZED, FRIGHTENED, INTIMIDATED,
3 THREATENED, HARASSED, OR MOLESTED.

4 (C) CONDUCT ARISING FROM POSTING THE MESSAGE WOULD CAUSE A
5 REASONABLE PERSON TO SUFFER EMOTIONAL DISTRESS AND TO FEEL TER-
6 RORIZED, FRIGHTENED, INTIMIDATED, THREATENED, HARASSED, OR
7 MOLESTED.

8 (D) CONDUCT ARISING FROM POSTING THE MESSAGE CAUSES THE
9 VICTIM TO SUFFER EMOTIONAL DISTRESS AND TO FEEL TERRORIZED,
10 FRIGHTENED, INTIMIDATED, THREATENED, HARASSED, OR MOLESTED.

11 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A
12 CRIME AS FOLLOWS:

13 (A) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C), THE
14 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
15 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$2,500.00, OR
16 BOTH.

17 (B) EXCEPT AS PROVIDED IN SUBDIVISION (C), IF THE VICTIM IS
18 LESS THAN 18 YEARS OF AGE WHEN THE VIOLATION OCCURS AND THE
19 PERSON COMMITTING THE VIOLATION IS 5 OR MORE YEARS OLDER THAN THE
20 VICTIM, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISON-
21 MENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
22 \$10,000.00, OR BOTH.

23 (C) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
24 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
25 FINE OF NOT MORE THAN \$10,000.00, OR BOTH:

26 (i) POSTING THE MESSAGE IS IN VIOLATION OF A RESTRAINING
27 ORDER AND THE PERSON HAS RECEIVED ACTUAL NOTICE OF THAT

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1 RESTRAINING ORDER OR POSTING THE MESSAGE IS IN VIOLATION OF AN
2 INJUNCTION OR PRELIMINARY INJUNCTION.

3 (ii) POSTING THE MESSAGE IS IN VIOLATION OF A CONDITION OF
4 PROBATION, A CONDITION OF PAROLE, A CONDITION OF PRETRIAL
5 RELEASE, OR A CONDITION OF RELEASE ON BOND PENDING APPEAL.

6 (iii) POSTING THE MESSAGE RESULTS IN A CREDIBLE THREAT BEING
7 COMMUNICATED TO THE VICTIM, A MEMBER OF THE VICTIM'S FAMILY, OR
8 ANOTHER INDIVIDUAL LIVING IN THE SAME HOUSEHOLD AS THE VICTIM.

9 (iv) THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF VIOLATING
10 THIS SECTION OR SECTION 411H OR 411I OR A SUBSTANTIALLY SIMILAR
11 LAW OF ANOTHER STATE, A POLITICAL SUBDIVISION OF ANOTHER STATE,
12 OR OF THE UNITED STATES.

13 (3) THIS SECTION DOES NOT APPLY TO AN INTERNET OR COMPUTER
14 NETWORK SERVICE PROVIDER WHO IN GOOD FAITH, AND WITHOUT KNOWLEDGE
15 OF THE SPECIFIC NATURE OF THE MESSAGE POSTED, PROVIDES THE MEDIUM
16 FOR DISSEMINATING INFORMATION OR COMMUNICATION BETWEEN PERSONS.

17 (4) THE COURT MAY ORDER A PERSON CONVICTED OF VIOLATING THIS
18 SECTION TO REIMBURSE THIS STATE OR A LOCAL UNIT OF GOVERNMENT OF
19 THIS STATE FOR THE EXPENSES INCURRED IN RELATION TO THE VIOLATION
20 IN THE SAME MANNER THAT EXPENSES MAY BE ORDERED TO BE REIMBURSED
21 UNDER SECTION 1F OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE,
22 1927 PA 175, MCL 769.1F.

23 (5) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING
24 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION
25 OF LAW COMMITTED BY THAT PERSON WHILE VIOLATING OR ATTEMPTING TO
26 VIOLATE THIS SECTION.

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1 (6) A VIOLATION OR ATTEMPTED VIOLATION OF THIS SECTION
2 OCCURS ONLY IF EITHER OF THE FOLLOWING APPLY:

3 (A) THE PERSON POSTS THE MESSAGE WHILE IN THIS STATE.

4 (B) THE PERSON WHO POSTS THE MESSAGE KNOWS THAT THE VICTIM
5 LIVES IN THIS STATE OR THAT THE CONDUCT ARISING FROM POSTING THE
6 MESSAGE WOULD OCCUR IN THIS STATE.

7 (7) AS USED IN THIS SECTION:

8 (A) "COMPUTER" MEANS ANY CONNECTED, DIRECTLY INTEROPERABLE
9 OR INTERACTIVE DEVICE, EQUIPMENT, OR FACILITY THAT USES A COM-
10 PUTER PROGRAM OR OTHER INSTRUCTIONS TO PERFORM SPECIFIC OPERA-
11 TIONS INCLUDING LOGICAL, ARITHMETIC, OR MEMORY FUNCTIONS WITH OR
12 ON COMPUTER DATA OR A COMPUTER PROGRAM AND THAT CAN STORE,
13 RETRIEVE, ALTER, OR COMMUNICATE THE RESULTS OF THE OPERATIONS TO
14 A PERSON, COMPUTER PROGRAM, COMPUTER, COMPUTER SYSTEM, OR COM-
15 PUTER NETWORK.

16 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWIRE
17 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
18 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
19 COMPUTERS.

20 (C) "COMPUTER PROGRAM" MEANS A SERIES OF INTERNAL OR EXTER-
21 NAL INSTRUCTIONS COMMUNICATED IN A FORM ACCEPTABLE TO A COMPUTER
22 THAT DIRECTS THE FUNCTIONING OF A COMPUTER, COMPUTER SYSTEM, OR
23 COMPUTER NETWORK IN A MANNER DESIGNED TO PROVIDE OR PRODUCE PRO-
24 DUCTS OR RESULTS FROM THE COMPUTER, COMPUTER SYSTEM, OR COMPUTER
25 NETWORK.

26 (D) "COMPUTER SYSTEM" MEANS A SET OF RELATED, CONNECTED OR
27 UNCONNECTED, COMPUTER EQUIPMENT, DEVICES, SOFTWARE, OR HARDWARE.

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1 (E) "CREDIBLE THREAT" MEANS A THREAT TO KILL ANOTHER
2 INDIVIDUAL OR A THREAT TO INFLICT PHYSICAL INJURY UPON ANOTHER
3 INDIVIDUAL THAT IS MADE IN ANY MANNER OR IN ANY CONTEXT THAT
4 CAUSES THE INDIVIDUAL HEARING OR RECEIVING THE THREAT TO REASON-
5 ABLY FEAR FOR HIS OR HER SAFETY OR THE SAFETY OF ANOTHER
6 INDIVIDUAL.

7 (F) "DEVICE" INCLUDES, BUT IS NOT LIMITED TO, AN ELECTRONIC,
8 MAGNETIC, ELECTROCHEMICAL, BIOCHEMICAL, HYDRAULIC, OPTICAL, OR
9 ORGANIC OBJECT THAT PERFORMS INPUT, OUTPUT, OR STORAGE FUNCTIONS
10 BY THE MANIPULATION OF ELECTRONIC, MAGNETIC, OR OTHER IMPULSES.

11 (G) "EMOTIONAL DISTRESS" MEANS SIGNIFICANT MENTAL SUFFERING
12 OR DISTRESS THAT MAY, BUT DOES NOT NECESSARILY, REQUIRE MEDICAL
13 OR OTHER PROFESSIONAL TREATMENT OR COUNSELING.

14 (H) "INTERNET" MEANS THAT TERM AS DEFINED IN SECTION 230 OF
15 TITLE II OF THE COMMUNICATIONS ACT OF 1934, CHAPTER 652, 110
16 STAT. 137, 47 U.S.C. 230.

17 (I) "POST A MESSAGE" MEANS TRANSFERRING, SENDING, POSTING,
18 PUBLISHING, DISSEMINATING, OR OTHERWISE COMMUNICATING OR ATTEMPT-
19 ING TO TRANSFER, SEND, POST, PUBLISH, DISSEMINATE, OR OTHERWISE
20 COMMUNICATE INFORMATION THAT WOULD ALLOW ANOTHER PERSON TO CON-
21 TACT THE VICTIM OR A MEMBER OF THE VICTIM'S IMMEDIATE FAMILY,
22 SUCH AS THE LOCATION OR ADDRESS OF RESIDENCE OR EMPLOYMENT OR
23 OTHER PLACE AT WHICH THE PERSON KNOWS THE VICTIM OR A MEMBER OF
24 THE VICTIM'S IMMEDIATE FAMILY CAN BE CONTACTED OR A TELEPHONE
25 NUMBER OR ELECTRONIC ADDRESS AT WHICH THE PERSON KNOWS THE VICTIM
26 OR A MEMBER OF THE VICTIM'S IMMEDIATE FAMILY CAN BE CONTACTED.

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1 (J) "UNCONSENTED CONTACT" MEANS ANY CONTACT WITH ANOTHER
2 INDIVIDUAL THAT IS INITIATED OR CONTINUED WITHOUT THAT
3 INDIVIDUAL'S CONSENT OR IN DISREGARD OF THAT INDIVIDUAL'S
4 EXPRESSED DESIRE THAT THE CONTACT BE AVOIDED OR DISCONTINUED.

5 UNCONSENTED CONTACT INCLUDES ANY OF THE FOLLOWING:

6 (i) FOLLOWING OR APPEARING WITHIN SIGHT OF THAT INDIVIDUAL.

7 (ii) APPROACHING OR CONFRONTING THAT INDIVIDUAL IN A PUBLIC
8 PLACE OR ON PRIVATE PROPERTY.

9 (iii) APPEARING AT THAT INDIVIDUAL'S WORKPLACE OR
10 RESIDENCE.

11 (iv) ENTERING ONTO OR REMAINING ON PROPERTY OWNED, LEASED,
12 OR OCCUPIED BY THAT INDIVIDUAL.

13 (v) CONTACTING THAT INDIVIDUAL BY TELEPHONE.

14 (vi) SENDING MAIL OR ELECTRONIC COMMUNICATIONS TO THAT INDI-
15 VIDUAL THROUGH THE USE OF ANY MEDIUM, INCLUDING THE INTERNET OR A
16 COMPUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER
17 NETWORK.

18 (vii) PLACING AN OBJECT ON, OR DELIVERING OR HAVING DELIV-
19 ERED AN OBJECT TO, PROPERTY OWNED, LEASED, OR OCCUPIED BY THAT
20 INDIVIDUAL.

21 (K) "VICTIM" MEANS THE INDIVIDUAL WHO IS THE TARGET OF THE
22 MESSAGE POSTED.