

**SENATE 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 OR HAS REASON TO KNOW THAT POSTING THE
7 MESSAGE COULD CAUSE 2 OR MORE SEPARATE NONCONTINUOUS ACTS OF
8 UNCONSENTED CONTACT WITH THE VICTIM.
9 (B) POSTING THE MESSAGE IS INTENDED TO CAUSE CONDUCT THAT
10 WOULD MAKE THE VICTIM FEEL TERRORIZED, FRIGHTENED, INTIMIDATED,
11 THREATENED, HARASSED, OR MOLESTED.

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

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

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

10 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), THE PERSON IS
11 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN
12 2 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

13 (B) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
14 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
15 FINE OF NOT MORE THAN \$10,000.00, OR BOTH:

16 (i) POSTING THE MESSAGE IS IN VIOLATION OF A RESTRAINING
17 ORDER AND THE PERSON HAS RECEIVED ACTUAL NOTICE OF THAT RESTRAIN-
18 ING ORDER OR POSTING THE MESSAGE IS IN VIOLATION OF AN INJUNCTION
19 OR PRELIMINARY INJUNCTION.

20 (ii) POSTING THE MESSAGE IS IN VIOLATION OF A CONDITION OF
21 PROBATION, A CONDITION OF PAROLE, A CONDITION OF PRETRIAL
22 RELEASE, OR A CONDITION OF RELEASE ON BOND PENDING APPEAL.

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

26 (iv) THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF VIOLATING
27 THIS SECTION OR SECTION 145D, 411H, OR 411I, OR SECTION 6 OF 1979 PA
53, MCL 752.796, OR A SUBSTANTIALLY SIMILAR

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1 LAW OF ANOTHER STATE, A POLITICAL SUBDIVISION OF ANOTHER STATE,
2 OR OF THE UNITED STATES.

3 (v) THE VICTIM IS LESS THAN 18 YEARS OF AGE WHEN THE VIOLA-
4 TION IS COMMITTED AND THE PERSON COMMITTING THE VIOLATION IS 5 OR
5 MORE YEARS OLDER THAN THE VICTIM.

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

10 (4) THE COURT MAY ORDER A PERSON CONVICTED OF VIOLATING THIS
11 SECTION TO REIMBURSE THIS STATE OR A LOCAL UNIT OF GOVERNMENT OF
12 THIS STATE FOR THE EXPENSES INCURRED IN RELATION TO THE VIOLATION
13 IN THE SAME MANNER THAT EXPENSES MAY BE ORDERED TO BE REIMBURSED
14 UNDER SECTION 1F OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE,
15 1927 PA 175, MCL 769.1F.

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

(6) THIS SECTION DOES NOT PROHIBIT CONSTITUTIONALLY PROTECTED
SPEECH OR ACTIVITY.

20 (7) A PERSON MAY BE PROSECUTED IN THIS STATE FOR VIOLATING
21 OR ATTEMPTING TO VIOLATE THIS SECTION ONLY IF 1 OF THE FOLLOWING
22 APPLIES:

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

24 (B) CONDUCT ARISING FROM POSTING THE MESSAGE OCCURS IN THIS
25 STATE.

26 (C) THE VICTIM IS PRESENT IN THIS STATE AT THE TIME THE
27 OFFENSE OR ANY ELEMENT OF THE OFFENSE OCCURS.

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1 (D) THE PERSON POSTING THE MESSAGE KNOWS THAT THE VICTIM
2 RESIDES IN THIS STATE.

3 (8) AS USED IN THIS SECTION:

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

12 (B) "COMPUTER NETWORK" MEANS THE INTERCONNECTION OF HARDWARE
13 OR WIRELESS COMMUNICATION LINES WITH A COMPUTER THROUGH REMOTE
14 TERMINALS, OR A COMPLEX CONSISTING OF 2 OR MORE INTERCONNECTED
15 COMPUTERS.

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

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

24 (E) "CREDIBLE THREAT" MEANS A THREAT TO KILL ANOTHER INDI-
25 VIDUAL OR A THREAT TO INFLICT PHYSICAL INJURY UPON ANOTHER INDI-
26 VIDUAL THAT IS MADE IN ANY MANNER OR IN ANY CONTEXT THAT CAUSES

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1 THE INDIVIDUAL HEARING OR RECEIVING THE THREAT TO REASONABLY FEAR
2 FOR HIS OR HER SAFETY OR THE SAFETY OF ANOTHER INDIVIDUAL.

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

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

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

13 (I) "POST A MESSAGE" MEANS TRANSFERRING, SENDING, POSTING,
14 PUBLISHING, DISSEMINATING, OR OTHERWISE COMMUNICATING OR ATTEMPT-
15 ING TO TRANSFER, SEND, POST, PUBLISH, DISSEMINATE, OR OTHERWISE
16 COMMUNICATE INFORMATION, WHETHER TRUTHFUL OR UNTRUTHFUL, ABOUT
17 THE VICTIM.

18 (J) "UNCONSENTED CONTACT" MEANS ANY CONTACT WITH ANOTHER
19 INDIVIDUAL THAT IS INITIATED OR CONTINUED WITHOUT THAT
20 INDIVIDUAL'S CONSENT OR IN DISREGARD OF THAT INDIVIDUAL'S
21 EXPRESSED DESIRE THAT THE CONTACT BE AVOIDED OR DISCONTINUED.
22 UNCONSENTED CONTACT INCLUDES ANY OF THE FOLLOWING:

23 (i) FOLLOWING OR APPEARING WITHIN SIGHT OF THE VICTIM.

24 (ii) APPROACHING OR CONFRONTING THE VICTIM IN A PUBLIC PLACE
25 OR ON PRIVATE PROPERTY.

26 (iii) APPEARING AT THE VICTIM'S WORKPLACE OR RESIDENCE.

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1 (iv) ENTERING ONTO OR REMAINING ON PROPERTY OWNED, LEASED,
2 OR OCCUPIED BY THE VICTIM.

3 (v) CONTACTING THE VICTIM BY TELEPHONE.

4 (vi) SENDING MAIL OR ELECTRONIC COMMUNICATIONS TO THE VICTIM
5 THROUGH THE USE OF ANY MEDIUM, INCLUDING THE INTERNET OR A COM-
6 PUTER, COMPUTER PROGRAM, COMPUTER SYSTEM, OR COMPUTER NETWORK.

7 (vii) PLACING AN OBJECT ON, OR DELIVERING OR HAVING DELIV-
8 ERED AN OBJECT TO, PROPERTY OWNED, LEASED, OR OCCUPIED BY THE
9 VICTIM.

10 (K) "VICTIM" MEANS THE INDIVIDUAL WHO IS THE TARGET OF THE
11 CONDUCT ELICITED BY THE POSTED MESSAGE OR A MEMBER OF THAT
12 INDIVIDUAL'S IMMEDIATE FAMILY.

Enacting section 1. This amendatory act takes effect April 1, 2001.