

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009

Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2003 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



Sen. Kirk Watson (Chair)



Sen. Rodney Ellis

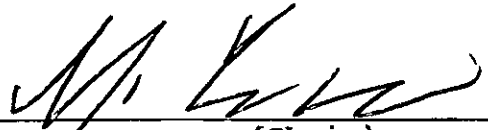


Sen. Kel Seliger

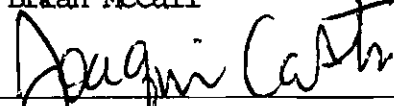
Sen. Jeff Wentworth



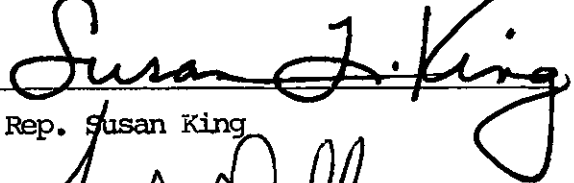
On the part of the Senate  
Sen. John Whitmire



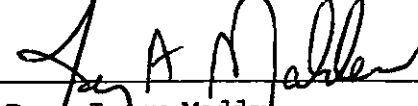
Rep. Brian McCall (Chair)



Rep. Joaquin Castro



Rep. Susan King



Rep. Jerry Madden



On the part of the House  
Rep. Paula Pierson

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H. B. No. 2003

A BILL TO BE ENTITLED

1

AN ACT

2

relating to *the creation of the offense of online harassment.*

3

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



1  
2  
3

~~ALL TO BE DELETED~~  
~~AN ACT~~

~~relating to the creation of the offense of online harassment.~~

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

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

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

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

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

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

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

the actor is any of  
the following entities or that the actor's conduct consisted solely  
of action taken as an employee of any of the following entities :

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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 is an employee of any of the following entities:~~

8 ~~the actor is an employee of any of the following entities:~~

- 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.

**House Bill 2003**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

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No equivalent provision.

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

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

(A) a chemical manufacturing facility;

(B) a refinery;

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

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

(E) a natural gas transmission compressor station;

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

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

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

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

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

(K) a cable television or video service provider headend.

Same as House version.

No equivalent provision.

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

(b) An offense under Subsection (a) [~~this section~~] is a

Same as House version.

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Class B misdemeanor, except that the offense is a state jail felony if:

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

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

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

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

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

~~[(2)] a state jail felony if:~~

~~[(A)] the aggregate amount involved is ~~[\$1,500 or more but] less than \$20,000~~;~~ or~~~~

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

(2) ~~[(3)] a felony of the third degree if the aggregate amount involved is \$20,000 or more but less than \$100,000;~~

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

(A) the aggregate amount involved is \$100,000 or more

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but less than \$200,000; or  
(B) the aggregate amount involved is any amount less than \$200,000 and the computer, computer network, or computer system is owned by the government or a critical infrastructure facility; or  
(4) [~~5~~] a felony of the first degree if the aggregate amount involved is \$200,000 or more.  
(d) A person who is [~~his~~] subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

No equivalent provision.

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

Same as House version.

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

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

SECTION 1. Same as Senate version.

**House Bill 2003**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

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

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

(e) It is a defense to prosecution under this section that

the actor's conduct consisted solely of action taken as an employee of:

- (1) a commercial social networking site;
- (2) an Internet service provider;

SENATE VERSION

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

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

(e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:

- (1) a commercial social networking site;
- (2) an Internet service provider;

CONFERENCE



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

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

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

(f) In this section:

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

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

SECTION 2. Effective date.

SENATE VERSION

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

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

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

(f) In this section:

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

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

Same as House version.

CONFERENCE

SECTION 2. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 30, 2009**

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
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. ),  
**Conference Committee Report**

**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 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.

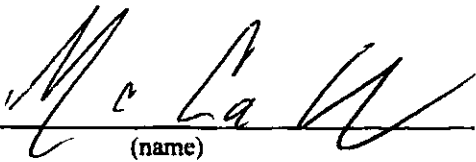
**Source Agencies:** 696 Department of Criminal Justice

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

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2003 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

  
\_\_\_\_\_  
(name)

5-30-09  
\_\_\_\_\_  
(date)