1	н. в. 2315
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3	(By Delegate Hall)
4	[Introduced January 12, 2011; referred to the
5	Committee on the Judiciary then Finance.]
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10	A BILL to amend and reenact §61-3C-14a of the Code of West
11	Virginia, 1931, as amended, relating to obscene, anonymous,
12	harassing and threatening communications by computer; criminal
13	penalties; and providing a felony criminal penalty for third
14	and subsequent offenses.
15	Be it enacted by the Legislature of West Virginia:
16	That §61-3C-14a of the Code of West Virginia, 1931, as
17	amended, be amended and reenacted to read as follows:
18	ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.
19	§61-3C-14a. Obscene, anonymous, harassing and threatening
20	communications by computer; penalty.
21	(a) It is unlawful for any person, with the intent to harass
22	or abuse another person, to use a computer to:
23	(1) Make contact with another without disclosing his or her

- 1 identity by sending a message to the person on an electronic mail
- 2 or other computerized communication system with the intent to
- 3 harass or abuse;
- 4 (2) Make contact with a person after being requested by the
- 5 person to desist from contacting them;
- 6 (3) Threaten to commit a crime against any person or property;
 7 or
- 8 (4) Cause obscene material to be delivered or transmitted to
- 9 a specific person after being requested to desist from sending such
- 10 material.
- 11 For purposes of this section, "obscene material" means
- 12 material that:
- (A) An average person, applying contemporary adult community
- 14 standards, would find, taken as a whole, appeals to the prurient
- 15 interest, is intended to appeal to the prurient interest, or is
- 16 pandered to a prurient interest;
- 17 (B) An average person, applying contemporary adult community
- 18 standards, would find, depicts or describes, in a patently
- 19 offensive way, sexually explicit conduct consisting of an ultimate
- 20 sexual act, normal or perverted, actual or simulated, an excretory
- 21 function, masturbation, lewd exhibition of the genitals, or
- 22 sadomasochistic sexual abuse; and
- 23 (C) A reasonable person would find, taken as a whole, lacks
- 24 literary, artistic, political or scientific value.

- 1 (b) It is unlawful for any person to knowingly permit a 2 computer under his or her control to be used for any purpose 3 prohibited by this section.
- 4 (c) Any offense committed under this section may be determined 5 to have occurred at the place at which the contact originated or 6 the place at which the contact was received or intended to be 7 received.
- 8 (d) Any person who violates a provision of this section is 9 guilty of a misdemeanor and, upon conviction thereof, shall be 10 fined not more than \$500 or confined in a county or regional jail 11 not more than six months, or both fined and confined. For a second 12 or subsequent offense, the person is guilty of a misdemeanor and, 13 upon conviction thereof, shall be fined not more than \$1,000 or 14 confined in a county or regional jail for not more than one year, 15 or both fined and confined. For a third or subsequent offense, the 16 person is guilty of a felony and, upon conviction thereof, shall be 17 fined not more than \$5,000 or imprisoned in a state correctional 18 facility for not more than two years, or both fined and imprisoned.

NOTE: The purpose of this bill is to provide that a third or subsequent offense under this section is a felony and, provide penalties of imprisonment for not more than two years, a fine of not more than \$5,000, or both.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.