

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 213**

5 (SENATORS FOSTER, KESSLER (ACTING PRESIDENT), CHAFIN,

6 JENKINS, LAIRD, MINARD, PALUMBO, SNYDER, WILLIAMS,

7 HALL, UNGER, BROWNING, WELLS, STOLLINGS, PLYMALE, PREZIOSO, MILLER, YOST,

8 KLEMPA AND BEACH, *original sponsors*)

9 _____
10 [Passed March 11, 2011; in effect ninety days from passage.]

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12
13 AN ACT to amend and reenact §61-3C-14a of the Code of West

14 Virginia, 1931, as amended, and to amend and reenact §61-8-

15 16 of said code, all relating to crimes using computers,

16 telephones and electronic communications devices; creating

17 offenses for the unlawful transmission of obscene,

18 anonymous, harassing and threatening communications and data

19 by mobile phone, personal digital assistant or other

20 electronic communications device; clarifying provisions

21 pertaining to the unlawful obscene, anonymous, harassing and

22 threatening communications by traditional voice

23 communication by telephone; creating a felony offense for

24 certain repeat offenses using a computer, mobile phone or

25 other electronic communications device; definitions; and

26 establishing criminal penalties.

1 *Be it enacted by the Legislature of West Virginia:*

2 That §61-3C-14a of the Code of West Virginia, 1931, as
3 amended, be amended and reenacted; and that §61-8-16 of said code
4 be amended and reenacted, all to read as follows:

5 **ARTICLE 3C. WEST VIRGINIA COMPUTER AND ELECTRONIC COMMUNICATIONS**
6 **DEVICE CRIME AND ABUSE ACT.**

7 **§61-3C-14a. Obscene, anonymous, harassing and threatening**
8 **communications by computer, cell phones and electronic**
9 **communication devices; penalty.**

10 (a) It is unlawful for any person, with the intent to harass
11 or abuse another person, to use a computer, mobile phone,
12 personal digital assistant or other electronic communication
13 device to:

14 (1) Make contact with another without disclosing his or her
15 identity with the intent to harass or abuse;

16 (2) Make contact with a person after being requested by the
17 person to desist from contacting them;

18 (3) Threaten to commit a crime against any person or
19 property; or

20 (4) Cause obscene material to be delivered or transmitted to
21 a specific person after being requested to desist from sending
22 such material.

23 (b) For purposes of this section:

24 (1) "Electronic communication device" means and includes a
25 telephone, wireless phone, computer, pager or any other

1 electronic or wireless device which is capable of transmitting a
2 document, image, voice, e-mail or text message using such device
3 in an electronic, digital or analog form from one person or
4 location so it may be viewed or received by another person or
5 persons at other locations.

6 (2) "use of a computer, mobile phone, personal digital
7 assistant or other electronic communication device" includes, but
8 is not limited to, the transmission of text messages, electronic
9 mail, photographs, videos, images or other nonvoice data by means
10 of an electronic communication system, and includes the
11 transmission of such data, documents, messages and images to
12 another's computer, e-mail account, mobile phone, personal
13 digital assistant or other electronic communication device.

14 (3) "obscene material" means material that:

15 (A) An average person, applying contemporary adult community
16 standards, would find, taken as a whole, appeals to the prurient
17 interest, is intended to appeal to the prurient interest, or is
18 pandered to a prurient interest;

19 (B) An average person, applying contemporary adult community
20 standards, would find, depicts or describes, in a patently
21 offensive way, sexually explicit conduct consisting of an
22 ultimate sexual act, normal or perverted, actual or simulated, an
23 excretory function, masturbation, lewd exhibition of the
24 genitals, or sadomasochistic sexual abuse; and

25 (C) A reasonable person would find, taken as a whole, lacks
26 literary, artistic, political or scientific value.

1 (c) It is unlawful for any person to knowingly permit a
2 computer, mobile phone or personal digital assistant or other
3 electronic communication device under his or her control to be
4 used for any purpose prohibited by this section.

5 (d) Any offense committed under this section may be
6 determined to have occurred at the place at which the contact
7 originated or the place at which the contact was received or
8 intended to be received.

9 (e) Any person who violates a provision of this section is
10 guilty of a misdemeanor and, upon conviction thereof, shall be
11 fined not more than \$500 or confined in jail not more than six
12 months, or both fined and confined. For a second or subsequent
13 offense, the person is guilty of a misdemeanor and, upon
14 conviction thereof, shall be fined not more than \$1,000 or
15 confined in jail for not more than one year, or both fined and
16 confined.

17 **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

18 **§61-8-16. Obscene, anonymous, harassing, repeated and**
19 **threatening telephone calls; penalty.**

20 (a) It is unlawful for any person with intent to harass or
21 abuse another by means of telephone to:

22 (1) Make any comment, request, suggestion or proposal which
23 is obscene; or

24 (2) Make a telephone call, whether or not conversation
25 ensues, without disclosing his or her identity and with intent to

1 harass any person at the called number; or

2 (3) Make or cause the telephone of another repeatedly or
3 continuously to ring, with intent to harass any person at the
4 called number; or

5 (4) Make repeated telephone calls, during which conversation
6 ensues, with intent to harass any person at the called number; or

7 (5) Threaten to commit a crime against any person or
8 property.

9 (b) It shall be unlawful for any person to knowingly permit
10 any telephone under his or her control to be used for any purpose
11 prohibited by this section.

12 (c) Any offense committed under this section may be deemed
13 to have occurred at the place at which the telephone call was
14 made, or the place at which the telephone call was received.

15 (d) Any person who violates any provision of this section is
16 guilty of a misdemeanor and, upon conviction thereof, shall be
17 fined not more than \$500, or confined in jail not more than six
18 months, or both fined and confined.