

By: Senator(s) Montgomery

To: Judiciary, Division B

SENATE BILL NO. 2181

1 AN ACT TO REVISE AND CLARIFY ELECTRONIC COMMUNICATION
2 OFFENSES; TO AMEND SECTION 97-29-45, MISSISSIPPI CODE OF 1972, TO
3 REVISE THE OFFENSE OF OBSCENE ELECTRONIC COMMUNICATION; TO AMEND
4 SECTION 97-45-15, MISSISSIPPI CODE OF 1972, TO REVISE THE OFFENSE
5 OF CYBERSTALKING; TO AMEND SECTION 97-45-17, MISSISSIPPI CODE OF
6 1972, TO REVISE THE OFFENSE OF CYBERBULLYING; AND FOR RELATED
7 PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** Section 97-29-45, Mississippi Code of 1972, is
10 amended as follows:

11 97-29-45. **Obscene or harassing electronic and**
12 **telecommunications.** (1) It shall be unlawful for any person or
13 persons:

14 (a) To make any comment, request, suggestion or
15 proposal by means of telecommunication or electronic communication
16 which is obscene, lewd or lascivious with intent to abuse,
17 threaten or harass any party to a telephone conversation,
18 telecommunication or electronic communication;

19 (b) To make a telecommunication or electronic
20 communication with intent to terrify, intimidate or harass, * * *



21 or threaten to inflict injury or physical harm to any person or to
22 his property;

23 (c) To make a telephone call or other telecommunication
24 or electronic communication, whether or not conversation ensues,
25 without disclosing his identity and with intent to annoy, abuse,
26 threaten or harass any person at the called number or electronic
27 address;

28 (d) To make or cause the telephone of another
29 repeatedly or continuously to ring, with intent to harass any
30 person at the called number;

31 (e) To make repeated telephone calls, * * * whether or
32 not conversation ensues, solely to harass any person at the called
33 number; or

34 (f) Knowingly to permit a computer, electronic device
35 or a telephone of any type under his control to be used for any
36 purpose prohibited by this section.

37 (2) Upon conviction of any person for the first offense of
38 violating subsection (1) of this section, * * * the person shall
39 be fined not more than Five Hundred Dollars (\$500.00) or
40 imprisoned in the county jail for not more than six (6) months, or
41 both.

42 (3) Upon conviction of any person for the second offense of
43 violating subsection (1) of this section, the offenses being
44 committed within a period of five (5) years, * * * the person
45 shall be fined not more than One Thousand Dollars (\$1,000.00) or



46 imprisoned in the county jail for not more than one (1) year, or
47 both.

48 (4) For any third or subsequent conviction of any person
49 violating subsection (1) of this section, the offenses being
50 committed within a period of five (5) years, * * * the person
51 shall be guilty of a felony and fined not more than Two Thousand
52 Dollars (\$2,000.00) * * * or imprisoned in the * * * custody of
53 the Department of Corrections for not more than two (2) years, or
54 both.

55 (5) The provisions of this section do not apply to a person
56 or persons who make a telephone call that would be covered by the
57 provisions of the federal Fair Debt Collection Practices Act, 15
58 USCS Section 1692 et seq.

59 (6) Any person violating this section may be prosecuted in
60 the county where the telephone call, conversation, electronic
61 communication or language originates * * * if the call,
62 conversation or language originates in the State of
63 Mississippi. * * * If the call, conversation or language
64 originates outside of the State of Mississippi, then * * * the
65 person shall be prosecuted in the county to which * * * the
66 communication is transmitted.

67 (7) For the purposes of this section, "telecommunication"
68 and "electronic communication" mean and include any type of
69 telephonic, electronic or radio communications, or transmission of
70 signs, signals, data, writings, images and sounds or intelligence



71 of any nature by telephone, including, without limitation,
72 cellular telephones, satellite telephones, wire, cable, radio,
73 electromagnetic, photoelectronic or photo-optical system or the
74 creation, display, management, storage, processing, transmission
75 or distribution of images, text, voice, video or data by wire,
76 cable or wireless means, including the Internet.

77 (8) No person shall be held to have violated this section
78 solely for providing access or connection to telecommunications or
79 electronic communications services where the services do not
80 include the creation of the content of the communication.

81 Companies organized to do business as commercial broadcast radio
82 stations, television stations, telecommunications service
83 providers, Internet service providers, cable service providers or
84 news organizations shall not be criminally liable under this
85 section.

86 **SECTION 2.** Section 97-45-15, Mississippi Code of 1972, is
87 amended as follows:

88 97-45-15. (1) * * * A person * * * commits the offense of
89 cyberstalking if the person:

90 (a) Uses in electronic mail or electronic communication
91 any words or language threatening to inflict bodily harm to any
92 person or to that person's child, sibling, spouse or dependent, or
93 physical injury to the property of any person, or for the purpose
94 of extorting money or other things of value from any person.



95 (b) Electronically mails or electronically communicates
96 to another repeatedly, whether or not conversation ensues, for the
97 purpose of threatening, terrifying or harassing any person.

98 (c) Electronically mails or electronically communicates
99 to another and to knowingly make any false statement concerning
100 death, injury, illness, disfigurement, indecent conduct, or
101 criminal conduct of the person electronically mailed or of any
102 member of the person's family or household with the intent to
103 threaten, terrify or harass.

104 (d) Knowingly permits an electronic communication
105 device under the person's control to be used for any purpose
106 prohibited by this section.

107 (2) (a) Except as provided in paragraph (b) of this
108 subsection, whoever commits the offense of cyberstalking shall be
109 punished, upon conviction, as follows:

110 (i) Upon conviction of any person for the first
111 offense of violating subsection (1) of this section, the person
112 shall be fined not more than Five Hundred Dollars (\$500.00) or
113 imprisoned in the county jail for not more than six (6) months, or
114 both.

115 (* * *ii) * * * Upon conviction of any person for
116 the second or subsequent offense of violating subsection (1) of
117 this section, the person is guilty of a felony punishable by
118 imprisonment for not more than two (2) years or a fine of not more
119 than Five Thousand Dollars (\$5,000.00), or both.



120 (b) If any of the following apply, the person convicted
121 is guilty of a felony punishable by imprisonment for not more than
122 five (5) years or a fine of not more than Ten Thousand Dollars
123 (\$10,000.00), or both:

124 (i) The offense is in violation of a restraining
125 order and the person has received actual notice of that
126 restraining order or posting the message is in violation of an
127 injunction or preliminary injunction.

128 (ii) The offense is in violation of a condition of
129 probation, a condition of parole, a condition of pretrial release
130 or a condition of release on bond pending appeal.

131 (iii) The offense results in a credible threat
132 being communicated to the victim, a member of the victim's family,
133 or another individual living in the same household as the victim.

134 (iv) The person has been previously convicted of
135 violating * * * a substantially similar law of another state, a
136 political subdivision of another state, or of the United States.

137 (3) This section does not apply to any peaceable,
138 nonviolent, or nonthreatening activity intended to express
139 political views or to provide lawful information to others. This
140 section shall not be construed to impair any constitutionally
141 protected activity, including speech, protest or assembly.

142 (4) Any person violating this section may be prosecuted in
143 the county where the telephone call, conversation, electronic
144 communication or language originates if the call, conversation or



145 language originates in the State of Mississippi. If the call,
146 conversation or language originates outside of the State of
147 Mississippi, then the person shall be prosecuted in the county to
148 which it is transmitted.

149 **SECTION 3.** Section 97-45-17, Mississippi Code of 1972, is
150 amended as follows:

151 97-45-17. (1) A person shall not post a message for the
152 purpose of causing injury to any person through the use of any
153 medium of communication, including the Internet or a computer,
154 computer program, computer system * * *, computer network, or
155 other electronic medium of communication without the victim's
156 consent * * *.

157 (2) (a) * * * Upon conviction of any person * * * for the
158 first offense of violating subsection (1) of this section, * * *
159 the person shall be fined not more than Five Hundred Dollars
160 (\$500.00) or imprisoned in the county jail for not more than six
161 (6) months, or both.

162 (b) Upon conviction of any person for the second or
163 subsequent offense of violating subsection (1) of this section,
164 the person shall be guilty of a felony punishable by imprisonment
165 for not more than five (5) years or a fine of not more than Ten
166 Thousand Dollars (\$10,000.00), or both.

167 (3) Any person violating this section may be prosecuted in
168 the county where the telephone call, conversation, electronic
169 communication or language originates if the call, conversation or



170 language originates in the State of Mississippi. If the call,
171 conversation or language originates outside of the State of
172 Mississippi, then the person shall be prosecuted in the county to
173 which it is transmitted.

174 **SECTION 4.** This act shall take effect and be in force from
175 and after July 1, 2015.

