



**State of Tennessee**  
**PUBLIC CHAPTER NO. 362**

**HOUSE BILL NO. 300**

**By Representatives Curtiss, Moore, Hardaway, Dean, Harry Brooks, Montgomery, Todd, Lollar, Hurley, Watson, Maggart, White, Sanderson, Eldridge, Camper, Lundberg, Womick, Wirgau, Shipley, Sexton, Powers, Halford, Don Miller, Sargent, Favors, Brown, Elam, Gotto, Fitzhugh, Roach, Weaver, McDonald**

**Substituted for: Senate Bill No. 487**

**By Senators Ketron, Marrero, Berke**

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 3, relative to the offense of harassment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-308(a)(4), is amended by deleting the language "Communicates with another person" and by substituting instead the language "Communicates with another person or transmits or displays an image in a manner in which there is a reasonable expectation that the image will be viewed by the victim."

SECTION 2. Tennessee Code Annotated, Section 39-17-308, is amended by adding the following as new appropriately designated subsection:

( ) As used in this section:

(1) "Electronic communications service" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system;

(2) "Image" includes, but is not limited to, a visual depiction, video clip or photograph of another person;

(3) "Log files" mean computer-generated lists that contain various types of information regarding the activities of a computer, including, but not limited to, time of access to certain records, processes running on a computer or the usage of certain computer resources; and

(4) "Social network" means any online community of people who share interests and activities, or who are interested in exploring the interests and activities of others, and which provides ways for users to interact.

SECTION 3. Tennessee Code Annotated, Section 39-17-308(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) Except as provided in subdivision (d), a violation of subsection (a) is a Class A misdemeanor. A violation of subsection (b) is a Class E felony.

SECTION 4. Tennessee Code Annotated, Section 39-17-308, is further amended by adding the following as new subsection (d):

(d)

(1) A violation by a minor of subdivision (a)(4) is a delinquent act and shall be punishable only by up to thirty (30) hours of community service, without compensation, for charitable or governmental agencies as determined by the court.

(2) The offense described in subdivision (a)(4) shall not apply to an entity providing an electronic communications service to the public acting in the normal course of providing that service.

(3)

(A) The service providers described in subdivision (d)(2) shall not be required to maintain any record not otherwise kept in the ordinary course of that service provider's business; provided, however, that if any electronic communications service provider operates a web site that offers a social network service and the electronic communications service provider provides services to consumers in this state, any log files and images or communications that have been sent, posted or displayed on the social network service's web site and maintained by the electronic communications service provider shall be disclosed to any governmental entity responsible for enforcing subdivision (a)(4) only if the governmental entity:

(i) Obtains a warrant issued using this state's warrant procedures by a court of competent jurisdiction;

(ii) Obtains a court order for the disclosure under subdivision (d)(3)(C); or

(iii) Has the consent of the person who sent, posted or displayed any log files and images or communications on the social network service's web site maintained by the electronic communications service provider.

(B) No cause of action shall lie in any court against any provider of an electronic communications service, its officers, employees, agent, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or warrant.

(C) A court order for disclosure under subdivision (d)(3)(A)(ii) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of an electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. A court order shall not issue if prohibited by the law of this state. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify the order, if the information or records requested are unusually voluminous in nature or compliance with the order otherwise would cause an undue burden on the provider.

SECTION 5. This act shall take effect July 1, 2011, the public welfare requiring it.

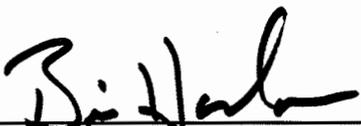
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PASSED: May 18, 2011

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

  
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RON RAMSEY  
SPEAKER OF THE SENATE

APPROVED this 30<sup>th</sup> day of May 2011

  
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BILL HASLAM, GOVERNOR