

By: Representative Moak

To: Judiciary B

## HOUSE BILL NO. 132

1 AN ACT TO CREATE THE TORT OF STALKING WHICH INCLUDES THE USE  
2 OF ELECTRONIC COMMUNICATION DEVICES; TO PROHIBIT MAKING THREATS  
3 WITH ELECTRONIC COMMUNICATION DEVICES; TO PROVIDE PENALTIES FOR  
4 VIOLATIONS; TO AMEND SECTION 97-3-107, MISSISSIPPI CODE OF 1972,  
5 IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** It is the intent of this act to clarify that  
8 electronic communications are included in the actions that can  
9 constitute the crimes of harassment and stalking. It is not the  
10 intent of the Legislature by adoption of this act, to restrict in  
11 any way the types of conduct or actions that can constitute  
12 harassment or stalking.

13 **SECTION 2.** (1) A person is liable for the tort of stalking  
14 when the plaintiff proves all of the following elements of the  
15 tort:

16 (a) The defendant engaged in a pattern of conduct the  
17 intent of which was to follow, alarm or harass the plaintiff. In  
18 order to establish this element, the plaintiff shall be required  
19 to support his or her allegations with independent corroborating  
20 evidence.

21 (b) As a result of that pattern of conduct, the  
22 plaintiff reasonably feared for his or her safety, or the safety  
23 of an immediate family member. For purposes of this paragraph,  
24 "immediate family" means a spouse, parent, child, any person  
25 related by consanguinity or affinity within the second degree, or  
26 any person who regularly resides or, within the six (6) months  
27 preceding any portion of the pattern of conduct, regularly  
28 resided, in the plaintiff's household.

29 (c) One of the following:

30 (i) The defendant, as a part of the pattern of  
31 conduct specified in paragraph (a) made a credible threat with the  
32 intent to place the plaintiff in reasonable fear for his or her  
33 safety, or the safety of an immediate family member and, on at  
34 least one (1) occasion, the plaintiff clearly and definitively  
35 demanded that the defendant cease and abate his or her pattern of  
36 conduct and the defendant persisted in his or her pattern of  
37 conduct.

38 (ii) The defendant violated a restraining order,  
39 including, but not limited to, any order issued pursuant to  
40 Section 97-3-107, prohibiting any act described in subsection (1).

41 (2) For the purposes of this section:

42 (a) "Pattern of conduct" means conduct composed of a  
43 series of acts over a period of time, however short, evidencing a  
44 continuity of purpose. Constitutionally protected activity is not  
45 included within the meaning of "pattern of conduct."

46 (b) "Credible threat" means a verbal or written threat,  
47 including that communicated by means of an electronic  
48 communication device or a threat implied by a pattern of conduct  
49 or a combination of verbal, written or electronically communicated  
50 statements and conduct, made with the intent and apparent ability  
51 to carry out the threat so as to cause the person who is the  
52 target of the threat to reasonably fear for his or her safety or  
53 the safety of his or her immediate family.

54 (c) "Electronic communication device" includes, but is  
55 not limited to, telephones, cellular telephones, computers, video  
56 recorders, fax machines, or pagers. "Electronic communication"  
57 has the same meaning as the term defined in subsection 12 of  
58 Section 2510 of Title 18 of the United States Code.

59 (d) "Harass" means a knowing and willful course of  
60 conduct directed at a specific person which seriously alarms,  
61 annoys, torments or terrorizes the person, and which serves no

62 legitimate purpose. The course of conduct must be such as would  
63 cause a reasonable person to suffer substantial emotional  
64 distress, and must actually cause substantial emotional distress  
65 to the person.

66 (3) A person who commits the tort of stalking upon another  
67 is liable to that person for damages, including, but not limited  
68 to, general damages, special damages and punitive damages.

69 (4) In an action pursuant to this section, the court may  
70 grant equitable relief, including, but not limited to, an  
71 injunction.

72 (5) The rights and remedies provided in this section are  
73 cumulative and in addition to any other rights and remedies  
74 provided by law.

75 (6) This section shall not be construed to impair any  
76 constitutionally protected activity, including, but not limited  
77 to, speech, protest and assembly.

78 **SECTION 3.** (1) Any person who willfully threatens to commit  
79 a crime which will result in death or great bodily injury to  
80 another person, with the specific intent that the statement, made  
81 verbally, in writing or by means of an electronic communication  
82 device, is to be taken as a threat, even if there is no intent of  
83 actually carrying it out, which, on its face and under  
84 circumstances in which it is made, is so unequivocal,  
85 unconditional, immediate and specific as to convey to the person  
86 threatened, a gravity of purpose and an immediate prospect of  
87 execution of the threat and thereby causes that person reasonably  
88 to be in sustained fear for his or her own safety or for his or  
89 her immediate family's safety shall be punished by imprisonment in  
90 the county jail not to exceed one (1) year or by imprisonment in  
91 the State Penitentiary.

92 (2) For the purposes of this section, "immediate family"  
93 means any spouse, whether by marriage or not, parent, child, any  
94 person related by consanguinity or affinity within the second

95 degree or any other person who regularly resides in the household  
96 or who, within the prior six (6) months, regularly resided in the  
97 household.

98 (3) "Electronic communication device" includes, but is not  
99 limited to, telephones, cellular telephones, computers, video  
100 recorders, fax machines or pagers.

101 (4) "Electronic communication" has the same meaning as the  
102 term defined in subsection 12 of Section 2510 of Title 18 of the  
103 United States Code.

104 **SECTION 4.** Section 97-3-107, Mississippi Code of 1972, is  
105 amended as follows:

106 97-3-107. (1) Any person who willfully, maliciously and  
107 repeatedly follows or harasses another person, or who makes a  
108 credible threat, with the intent to place that person in  
109 reasonable fear of death or great bodily injury is guilty of the  
110 crime of stalking, and upon conviction thereof shall be punished  
111 by imprisonment in the county jail for not more than one (1) year  
112 or by a fine of not more than One Thousand Dollars (\$1,000.00), or  
113 by both such fine and imprisonment.

114 (2) Any person who violates subsection (1) of this section  
115 when there is a valid temporary restraining order, ex parte  
116 protective order, protective order after hearing, court approved  
117 consent agreement, or an injunction issued by a municipal,  
118 justice, county, circuit or chancery court, federal or tribal  
119 court or by a foreign court of competent jurisdiction in effect  
120 prohibiting the behavior described in subsection (1) of this  
121 section against the same party, shall be punishable by  
122 imprisonment in the county jail for not more than one (1) year and  
123 by a fine of not more than One Thousand Five Hundred Dollars  
124 (\$1,500.00).

125 (3) A second or subsequent conviction occurring within seven  
126 (7) years of a prior conviction under subsection (1) of this  
127 section against the same victim, and involving an act of violence

128 or "a credible threat" of violence as defined in subsection (5) of  
129 this section, shall be punishable by imprisonment for not more  
130 than three (3) years and by a fine of not more than Two Thousand  
131 Dollars (\$2,000.00).

132 (4) For the purposes of this section, "harasses" means a  
133 knowing and willful course of conduct directed at a specific  
134 person which seriously alarms, annoys, or harasses the person, and  
135 which serves no legitimate purpose. The course of conduct must be  
136 such as would cause a reasonable person to suffer substantial  
137 emotional distress, and must actually cause substantial emotional  
138 distress to the person. "Course of conduct" means a pattern of  
139 conduct composed of a series of acts over a period of time,  
140 however short, evidencing a continuity of purpose.  
141 Constitutionally protected activity is not included within the  
142 meaning of "course of conduct."

143 (5) For the purposes of this section, "a credible threat"  
144 means a threat, including the use of an electronic communication  
145 device, or a threat implied by a pattern of conduct or a  
146 combination of verbal, written or electronically communicated  
147 statements and conduct made with the intent and the apparent  
148 ability to carry out the threat so as to cause the person who is  
149 the target of the threat to reasonably fear for his or her safety.

150 (6) For purposes of this section, the term "electronic  
151 communication device" includes, but is not limited to, telephones,  
152 cellular phones, computers, video recorders, fax machines or  
153 paggers. "Electronic communication" has the same meaning as the  
154 term defined in subsection 12 of Section 2510 of Title 18 of the  
155 United States Code.

156 **SECTION 5.** This act shall take effect and be in force from  
157 and after July 1, 2004.