

By Senator Smith

14-1389-06

1 A bill to be entitled

2 An act relating to stalking; amending s.

3 784.048, F.S.; defining the term "claimant";

4 providing that a claimant may bring a civil

5 action in a circuit court for damages against a

6 person for stalking; requiring the claimant to

7 prove the claim by a preponderance of the

8 evidence; authorizing the court to award

9 reasonable attorney's fees, court costs, and

10 punitive damages to the claimant, in addition

11 to actual damages; requiring a civil action for

12 stalking be commenced within 2 years after the

13 conduct giving rise to the claim; providing

14 that the remedies provided by the act are not

15 exclusive and are cumulative to any other

16 remedies, civil or criminal, provided by law;

17 providing that it is a defense to the civil

18 action that the person alleged to be stalking

19 the claimant was engaged in activity in support

20 of constitutionally or statutorily protected

21 rights; providing an effective date.

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23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 784.048, Florida Statutes, is

26 amended to read:

27 784.048 Stalking; definitions; criminal and civil

28 penalties.--

29 (1) As used in this section, the term:

30 (a) "Claimant" means a party seeking to recover

31 damages under this section, including a plaintiff,

1 counterclaimant, cross-claimant, or third-party plaintiff.

2 ~~"Harass" means to engage in a course of conduct directed at a~~
3 ~~specific person that causes substantial emotional distress in~~
4 ~~such person and serves no legitimate purpose.~~

5 (b) "Course of conduct" means a pattern of conduct
6 composed of a series of acts over a period of time, however
7 short, evidencing a continuity of purpose. Constitutionally
8 protected activity is not included within the meaning of
9 "course of conduct." Such constitutionally protected activity
10 includes picketing or other organized protests.

11 (c) "Credible threat" means a threat made with the
12 intent to cause the person who is the target of the threat to
13 reasonably fear for his or her safety. The threat must be
14 against the life of, or a threat to cause bodily injury to, a
15 person.

16 (d) "Cyberstalk" means to engage in a course of
17 conduct to communicate, or to cause to be communicated, words,
18 images, or language by or through the use of electronic mail
19 or electronic communication, directed at a specific person,
20 causing substantial emotional distress to that person and
21 serving no legitimate purpose.

22 (e) "Harass" means to engage in a course of conduct
23 directed at a specific person which causes substantial
24 emotional distress in the person and serves no legitimate
25 purpose.

26 (2) Any person who willfully, maliciously, and
27 repeatedly follows, harasses, or cyberstalks another person
28 commits the offense of stalking, a misdemeanor of the first
29 degree, punishable as provided in s. 775.082 or s. 775.083.

30 (3) Any person who willfully, maliciously, and
31 repeatedly follows, harasses, or cyberstalks another person,

1 and makes a credible threat with the intent to place that
2 person in reasonable fear of death or bodily injury of the
3 person, or the person's child, sibling, spouse, parent, or
4 dependent, commits the offense of aggravated stalking, a
5 felony of the third degree, punishable as provided in s.
6 775.082, s. 775.083, or s. 775.084.

7 (4) Any person who, after an injunction for protection
8 against repeat violence, sexual violence, or dating violence
9 pursuant to s. 784.046, or an injunction for protection
10 against domestic violence pursuant to s. 741.30, or after any
11 other court-imposed prohibition of conduct toward the subject
12 person or that person's property, knowingly, willfully,
13 maliciously, and repeatedly follows, harasses, or cyberstalks
14 another person commits the offense of aggravated stalking, a
15 felony of the third degree, punishable as provided in s.
16 775.082, s. 775.083, or s. 775.084.

17 (5) Any person who willfully, maliciously, and
18 repeatedly follows, harasses, or cyberstalks a minor under 16
19 years of age commits the offense of aggravated stalking, a
20 felony of the third degree, punishable as provided in s.
21 775.082, s. 775.083, or s. 775.084.

22 (6) Any law enforcement officer may arrest, without a
23 warrant, any person he or she has probable cause to believe
24 has violated the provisions of this section.

25 (7) Any person who, after having been sentenced for a
26 violation of s. 794.011 or s. 800.04, and prohibited from
27 contacting the victim of the offense under s. 921.244,
28 willfully, maliciously, and repeatedly follows, harasses, or
29 cyberstalks the victim commits the offense of aggravated
30 stalking, a felony of the third degree, punishable as provided
31 in s. 775.082, s. 775.083, or s. 775.084.

1 (8) The punishment imposed under this section shall
2 run consecutive to any former sentence imposed for a
3 conviction for any offense under s. 794.011 or s. 800.04.

4 (9)(a) A claimant may bring a civil action in a
5 circuit court for damages against a person if:

6 1. The person willfully, maliciously, and repeatedly
7 follows, harasses, or cyberstalks the claimant, thereby making
8 a credible threat to the safety of the claimant;

9 2. It is objectively reasonable for a person in the
10 claimant's situation to have been alarmed, threatened, or
11 coerced by the contact; and

12 3. The repeated and unwanted contact giving rise to
13 the credible threat by the person causes the claimant
14 reasonable apprehension regarding the personal safety of the
15 claimant, or the claimant's child, sibling, spouse, parent, or
16 dependent, or the safekeeping of claimant's property.

17 (b) The claimant has the burden of proving, by a
18 preponderance of the evidence, that the person violated
19 paragraph (a).

20 (c) In any civil action arising out of a violation of
21 this subsection, the court may award reasonable attorney's
22 fees, court costs, and punitive damages to the claimant, in
23 addition to actual damages, including damages for emotional
24 distress, suffered by the claimant.

25 (d) A civil action arising under this subsection must
26 be commenced within 2 years after the conduct giving rise to
27 the claim.

28 (e) The remedies provided by this subsection are not
29 exclusive and are cumulative to any other remedies, civil or
30 criminal, provided by law for the conduct giving rise to the
31 claim.

1 (f) It is a defense to a civil action brought under
2 this subsection that the person was engaged in conduct that
3 consisted of activity in support of constitutionally or
4 statutorily protected rights.

5 Section 2. This act shall take effect July 1, 2006.

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8 SENATE SUMMARY

9 Provides that a claimant may bring a civil action in a
10 circuit court for damages against a person for stalking
11 the claimant. Requires the claimant to prove the claim by
12 a preponderance of the evidence. Authorizes the court to
13 award reasonable attorney's fees, court costs, and
14 punitive damages to the claimant, in addition to actual
15 damages. Requires a civil action for stalking to be
16 commenced within 2 years after the conduct giving rise to
17 the claim. Provides that the remedies provided by the act
18 are not exclusive and are cumulative to any other
19 remedies. Provides that it is a defense to the civil
20 action that the person alleged to be stalking the
21 claimant was engaged in activity in support of
22 constitutionally or statutorily protected rights.
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