A BILL FOR AN ACT relating to public safety; to amend section 28-111, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-907, Revised Statutes Cumulative Supplement, 2020; to adopt the Doxing Prevention Act; to change provisions relating to penalty enhancements and false reporting; to define terms; to provide and change penalties; to provide for civil causes of action; to harmonize provisions; to provide severability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Doxing Prevention Act.

Sec. 2. For purposes of the Doxing Prevention Act, the definitions in section 28-109 and the following definitions apply:

(1) Actor means the person alleged to have violated the Doxing Prevention Act;

(2) Close relation means a current or former spouse or domestic partner, parent, child, sibling, stepchild, stepparent, grandparent, any person who regularly resides in the same household or who within the prior six months regularly resided in the same household, or any person with a significant personal or professional relationship;

(3) Electronic communication 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, digital, electromagnetic, photoelectronic, or photoptical system;

(4) Mental anguish means emotional distress or emotional suffering as evidenced by anxiety, fear, torment, or apprehension that may or may not result in a physical manifestation of mental anguish or a mental health diagnosis. The mental anguish must be protracted and not merely trivial or transitory;

(5) Personally identifiable information means:

(a) Any information that can be used to distinguish or trace an individual's identity, such as name, prior legal name, alias, mother's maiden name, social security number, date or place of birth, address, phone number, or biometric data;

(b) Any information that is linked or linkable to an individual, such as medical, financial, education, consumer, or employment information, data, or records;

(c) Any other sensitive private information that is linked or linkable to a specific identifiable individual, such as gender identity, sexual orientation, or any sexually intimate visual depiction; or
(d) Any information that provides access to a person's teleconferencing, video-teleconferencing, or other digital meeting room;

(6) Post means to circulate, deliver, distribute, disseminate, transmit, publish, or otherwise make available to two or more persons through electronic communication;

(7) Stalk and stalking means to knowingly or intentionally engage in a course of conduct, without a legitimate purpose, directed at or concerning a specific person that would cause a reasonable person to fear for such person's safety or the safety of a close relation or to suffer mental anguish; and

(8) Substantial life disruption means that a person significantly modifies that person's actions or routines in an attempt to avoid the actor or because of the actor's course of conduct. This includes, but is not limited to, changing a phone number, changing an email address, deleting personal electronic accounts, significantly decreasing use of the Internet, moving from an established residence, changing daily routines, changing routes to and from work, changing employment, changing a work schedule, or losing time from work or a job.

Sec. 3. (1) An actor commits the offense of doxing if:

(a) The actor intentionally posts another person's personally identifiable information without such person's consent;

(b) Such personally identifiable information is posted either:

(i) With the intent to promote or assist in the commission of an offense that would cause the person whose information is posted to suffer death, bodily injury, or stalking; or

(ii) With reckless disregard that the posting may incite or produce death, bodily injury, or stalking; and

(c) The posting of the personally identifiable information either:

(i) Is conducted with knowledge that the information will be used in the commission of an offense that would cause harm to the person whose information is posted or to a close relation to that person;
Would cause a reasonable person to suffer significant economic injury or mental anguish, to fear serious bodily injury or death, or to fear that serious bodily injury or death will be inflicted on a close relation; or

(iii) Causes the person whose information is posted to suffer a substantial life disruption.

(2) A violation of this section described in subdivision (1)(c)(i) or (ii) of this section is a Class I misdemeanor, except that the violation is a Class III felony if an individual suffers death, bodily injury, mental anguish, or significant economic injury as a proximate result of conduct arising out of the posting.

(3) A violation described in subdivision (1)(c)(iii) of this section is a Class II misdemeanor.

(4) It is not an offense under this section for a person to:

(a) Provide another person's personally identifiable information or in connection with:

(i) The reporting of criminal activity to a law enforcement agency; or

(ii) Any lawfully authorized investigative, protective, or intelligence activity of any state or federal law enforcement agency or of an intelligence agency of the United States;

(b) Disseminate personally identifiable information for the purpose of, or in connection with, the reporting of conduct reasonably believed to be unlawful; or

(c) Provide a person's personally identifiable information in connection with lawful and constitutionally protected activity as it pertains to speech, assembly, and petition.

(6) Nothing in this section shall be construed in any manner to:

(a) Conflict with 47 U.S.C. 230, as such section existed on January 1, 2021;

(b) Conflict with 42 U.S.C. 1983, as such section existed on January
1, 2021; or

(c) Prohibit any activity protected under the Constitution of the United States or the Constitution of Nebraska.

Sec. 4. (1) An individual who is a victim of an offense under section 3 of this act may bring a civil action against the person who committed such offense or any person who knowingly benefited, financially or by receiving anything of value, from participation in a venture that the person knew or should have known has engaged in an act in violation of section 3 of this act.

(2) A defendant found liable under this section shall be jointly and severally liable with any other person, if any, who is found liable under this section for damages arising from the same violation.

(3) A plaintiff who prevails in an action under the Doxing Prevention Act shall be entitled to:

(a) The greater of:

(i) Actual damages; or

(ii) Liquidated damages of one thousand dollars;

(b) Such preliminary and other equitable or declaratory relief as may be appropriate; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) A person may bring a civil action under this section regardless of whether there has been a conviction or prosecution for a violation of section 3 of this act.

(5) Nothing in this section shall be construed to prohibit a person from pursuing any other remedy provided by law.

Sec. 5. A violation of section 3 of this act may be prosecuted, and a civil action under section 4 of this act may be brought, in any county in which an element of the offense occurred or in which the victim resides.

Sec. 6. (1) Except as provided in subsection (2) of this section,
the Doxing Prevention Act shall be liberally construed and applied to
promote its underlying purpose to protect persons from doxing and provide
adequate remedies to victims of doxing.

(2) The Legislature does not intend the Doxing Prevention Act to allow prosecution for constitutionally protected activity.

Sec. 7. Section 28-101, Revised Statutes Cumulative Supplement, 2020, is amended to read:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section 10 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 8. Section 28-111, Reissue Revised Statutes of Nebraska, is amended to read:

28-111 Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal
mischief, section 28-519; unauthorized application of graffiti, section 28-524; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521; making a false report, section 28-907; or doxing, section 3 of this act.

Sec. 9. Section 28-907, Revised Statutes Cumulative Supplement, 2020, is amended to read:

28-907 (1) A person commits the offense of false reporting if such person he or she:

(a) Furnishes material information such person he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;

(b) Furnishes information such person he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;

(c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, digital, or mechanical means, knowing the same to be false, concerning the need for emergency response assistance due to criminal activity or an emergency incident of a fire department or any personnel or equipment of such department;

(d) Furnishes any information such person he or she knows to be false concerning the location of any explosive in any building or other property to any person; or

(e) Furnishes material information such person he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.

(2)(a) Except as provided in subsections (3) and (4) of this
section, false False reporting pursuant to subdivisions (1)(a) through
(d) of this section is a Class I misdemeanor for a first offense and a
Class IV felony for a second or subsequent offense.

(b) Except as provided in subsection (3) of this section, false
False reporting pursuant to subdivision (1)(e) of this section is an
infraction.

(3) A violation of this section is a Class III felony if the false
report proximately results in an emergency response and a person is
killed or suffers serious bodily injury as a proximate result of lawful
conduct arising out of that response.

(4) Except for a violation under subsection (3) of this section, a
violation of this section committed by a person under nineteen years of
age is an infraction for a first offense.

(5) Upon conviction for a violation of this section, the court may,
in addition to any other punishment imposed, order the defendant to make
restitution, in accordance with sections 29-2280 to 29-2289, to a public
agency for the reasonable costs of the emergency response by that public
agency resulting from the false report.

(6) Nothing in this section or section 10 of this act shall be
construed in any manner to:

(a) Conflict with 47 U.S.C. 230, as such section existed on January
1, 2021; or

(b) Conflict with 42 U.S.C. 1983, as such section existed on January
1, 2021.

(7) A violation of this section may be prosecuted in the county in
which the defendant made the false report, in the county in which the
recipient of the false report is located, or in the county where the
recipient responded to the false report.

(8) For purposes of this section, emergency incident means any
incident or condition that:

(a) Results in, or is likely to result in, the response of a public
official in an authorized emergency vehicle, aircraft, or vessel; or

(b) Jeopardizes or is likely to jeopardize public safety and results in, or is likely to result in, the evacuation of any area, building, structure, vehicle, or of any other place that any individual may enter.

Sec. 10. (1) An individual who suffers mental anguish, bodily harm, or death as a proximate result of a violation of section 28-907 may bring a civil action against the person who committed such offense or any person who knowingly benefited, financially or by receiving anything of value, from participation in a venture that the person knew or should have known has engaged in an act in violation of section 28-907.

(2) A defendant found liable under this section shall be jointly and severally liable with any other person, if any, who is found liable under this section for damages arising from the same violation.

(3) A plaintiff who prevails in an action under this section shall be entitled to:

(a) The greater of:

(i) Actual damages; or

(ii) Liquidated damages of one thousand dollars;

(b) Such preliminary and other equitable or declaratory relief as may be appropriate; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) A person may bring a civil action under this section regardless of whether there has been a conviction or prosecution for a violation of section 28-907.

(5) Nothing in this section shall be construed to prohibit a person from pursuing any other remedy provided by law.

(6) A civil action under this section may be brought in the county in which the victim resides or in any county described in subsection (7) of section 28-907.

(7) For purposes of this section, mental anguish has the same
Sec. 11. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 12. Original section 28-111, Reissue Revised Statutes of Nebraska, and sections 28-101 and 28-907, Revised Statutes Cumulative Supplement, 2020, are repealed.