

SHB 1652 - S COMM AMD
By Committee on Judiciary

NOT CONSIDERED 05/25/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that although social
4 networking web sites and online bulletin boards provide valuable
5 opportunities for networking, there are also opportunities for conduct
6 that can cause harm to other persons. There are civil and criminal
7 remedies for certain types of fraud, impersonation, and appropriation
8 of a person's personality for commercial purposes. However, how these
9 traditional legal remedies extend to wrongful impersonation over the
10 internet to mislead, deceive, harass, threaten, or intimidate is
11 relatively new and unclear. Courts have recognized the tort of
12 invasion of privacy, and one of the four categories of an invasion of
13 privacy claim is the misappropriation of another person's name or
14 likeness. It is the intent of the legislature to specify that the tort
15 of invasion of privacy may include the misappropriation of a person's
16 name or likeness through social networking web sites and online
17 bulletin boards with the intent to mislead, deceive, harass, threaten,
18 or intimidate.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW
20 to read as follows:

21 (1) The definitions in this subsection apply throughout this
22 section unless the context clearly requires otherwise.

23 (a) "Actual person" means a living individual.

24 (b) "Impersonates" or "impersonation" means using an actual
25 person's name or likeness to create an impersonation that another
26 person would reasonably believe or did reasonably believe was or is the
27 actual person being impersonated.

28 (c) "Interactive computer service" means any information service,
29 system, or access software provider that provides or enables computer

1 access by multiple users to a computer server, including specifically
2 a service or system that provides access to the internet and such
3 systems operated or services offered by libraries or educational
4 institutions.

5 (d) "Online bulletin board" means a web site that is designed
6 specifically for internet users to post and respond to online
7 classified advertisements that are viewable by other internet users.

8 (e) "Social networking web site" means a web site that allows a
9 user to create an account or profile for the user for the purposes of,
10 among other things, connecting the user's account or profile to other
11 users' accounts or profiles.

12 (2) A person may be liable in a civil action based on a claim of
13 invasion of privacy when:

14 (a) The person impersonates another actual person on a social
15 networking web site or online bulletin board;

16 (b) The impersonation was intentional and without the actual
17 person's consent;

18 (c) The person intended to deceive or mislead for the purpose of
19 harassing, threatening, intimidating, humiliating, or defrauding
20 another; and

21 (d) The impersonation proximately caused injury to the actual
22 person. Injury may include injury to reputation or humiliation, injury
23 to professional or financial standing, or physical harm.

24 (3)(a) The actual person who suffered injury by an impersonation in
25 violation of this section may bring an action to recover actual
26 damages, injunctive relief, and declaratory relief. The court may
27 award actual damages, injunctive relief, and declaratory relief as
28 necessary.

29 (b) The court may award the prevailing party costs and reasonable
30 attorneys' fees.

31 (4) This section does not apply when the impersonation was:

32 (a) For a use set forth in RCW 63.60.070, including for matters of
33 cultural, historical, political, religious, educational, newsworthy, or
34 public interest including, but not limited to, use in works of art,
35 commentary, satire, and parody;

36 (b) For a use that would violate chapter 63.60 RCW;

37 (c) Insignificant, de minimis, or incidental use; or

1 (d) Performed by a law enforcement agency as part of a lawful
2 criminal investigation.

3 (5) A court of this state may exercise jurisdiction in a suit
4 brought by a Washington resident or against a defendant who is a
5 Washington resident. Jurisdiction over any person who is not a
6 Washington resident may be exercised in a manner consistent with the
7 laws and Constitution of the state of Washington, including RCW
8 4.28.185, and the Constitution of the United States.

9 (6)(a) This section may not be construed to impose any liability on
10 an internet service provider, interactive computer service, computer
11 hardware or software provider, or web site operator or administrator or
12 its employees, unless the provider, operator, administrator, or
13 employee is the person impersonating an actual person. Nothing in this
14 section is intended to preclude other common law causes of action
15 against these entities.

16 (b) This section may not be construed to limit any other civil
17 cause of action available to a person under statute or common law or
18 any criminal prosecution."

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19 On page 1, line 1 of the title, after "impersonation;" strike the
20 remainder of the title and insert "adding a new section to chapter 4.24
21 RCW; creating a new section; and prescribing penalties."

EFFECT: Requires that the impersonation be intentional in order to be actionable. Specifies that a person must intend to deceive or mislead another for the purposes of harassing, threatening, intimidating, humiliating, or defrauding in order to be liable. Requires that the impersonation proximately cause injury, rather than that the impersonation "result in" injury. Specifies that the

exemption for law enforcement performing a criminal investigation applies to lawful criminal investigations. Clarifies that a court in Washington may have jurisdiction in an action where either the victim or the defendant is a Washington resident.

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