
Judiciary Committee

HB 1652

Title: An act relating to electronic impersonation.

Brief Description: Regarding electronic impersonation.

Sponsors: Representatives Frockt, Kenney, Reykdal, Rolfes, Probst, Goodman, Maxwell, McCoy, Jacks, Jinkins, Ryu, Kagi, Ladenburg, Stanford, Hasegawa, Fitzgibbon, Blake, Billig, Roberts, Clibborn, Ormsby, Moscoso, Hudgins and Liias.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a new civil cause of action allowing a person injured by electronic impersonation to seek damages under the common-law theory of invasion of privacy.

Hearing Date: 2/10/11

Staff: Parker Howell (786-5793) and Trudes Tango (786-7384).

Background:

Invasion of Privacy.

The Washington Supreme Court has held that a common-law right of privacy exists in the state and that individual plaintiffs may sue for invasions of that right. A right to privacy tort action concerns a person's right to be left alone and compensates that person primarily for injured feelings or mental suffering caused by an intrusion. A person may recover for damages to his or her reputation as well. In contrast, a defamation action is intended to protect a person's good reputation against dissemination of false information.

The tort of invasion of privacy generally applies to four distinct varieties of invasions, set forth in the Restatement (Second) of Torts: (1) unwarranted intrusion by the defendant into the plaintiff's private activities, affairs, or seclusion; (2) appropriation or exploitation by the defendant of the plaintiff's name, likeness, or personality; (3) public disclosure of private facts;

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and (4) placing another in a false light. Although Washington courts have expressly adopted some of these causes of action, it does not appear that they have adopted the Restatement on appropriation in reported cases.

Electronic Impersonation.

The use of electronic bulletin boards, such as Craigslist, and social networking sites, such as Facebook and Myspace, has grown exponentially during recent years. Facebook, for example, allows a person to create an online profile, including pictures of the person, personal information, and journal entries. Facebook claims more than 500 million active users, with 50 percent of those people logging on to the site on a given day. The average user has 130 online "friends," or people to whom the user links his or her profile to signal that the parties are acquaintances.

Technology makes it possible to obtain access to another person's profile and jokingly or maliciously change aspects of it, or to create a new account on behalf of another person, without the person's knowledge or consent. Other users may not be able to determine whether such unauthorized activity on a user's account represents the actions of the true person.

Laws in Other States.

In 2010, California enacted legislation making electronic impersonation both a crime and a civil cause of action. Any person who knowingly and without consent credibly impersonates another actual person through or on an Internet website or by other electronic means to harm, intimidate, threaten, or defraud is guilty of a misdemeanor punishable by a fine of \$1,000 or less, imprisonment for up to a year, or both. A private plaintiff also may sue for compensatory damages and injunctive or other equitable relief.

New York has enacted legislation criminalizing electronic impersonation in which a person communicates with intent to obtain a benefit or injure or defraud another.

Summary of Bill:

The Legislature finds that electronic impersonation is on the rise as more people conduct personal business online. Such impersonation can damage a person's reputation or have other harmful effects, and the Legislature intends to clarify that a person who suffers harm resulting from electronic impersonation may be able to bring a civil invasion of privacy claim.

A person may be liable for a civil action based on the common-law theory of invasion of privacy if he or she appropriates the reputation, prestige, or social or commercial standing of another person by impersonating that person through an Internet website or by other electronic means. A person injured by impersonation may bring a civil action to recover actual damages. A court has discretion to award injunctive and declaratory relief.

No liability is imposed on any Internet service provider, computer hardware or software provider, or website operator or administrator. But other common-law causes of action against those entities are not precluded.

These provisions do not limit common-law or statutory privileges or immunities, and prosecution of a person who violates the bill's provisions is not precluded under another provision of law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.