

HOUSE BILL REPORT

HB 1652

As Reported by House Committee On:
Judiciary

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.

Brief History:

Committee Activity:

Judiciary: 2/10/11, 2/17/11 [DPS].

Brief Summary of Substitute Bill

- Establishes a civil cause of action allowing a person injured by electronic impersonation to seek damages under the common-law theory of invasion of privacy.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

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

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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, including appropriation or exploitation by the defendant of the plaintiff's name, likeness, or personality. Although Washington courts have expressly recognized some of these types of invasions, it does not appear that they have recognized 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.

Personality Rights Statute.

Washington's personality rights statute grants every person a property right in the use of his or her name, voice, signature, photograph, or likeness. This right may be transferred or licensed and does not expire when a person dies. Use of a living or dead individual's voice, signature, photograph, or likeness in or on goods, to advertise or market products, or for certain other uses without consent, infringes this right. A person may sue for an injunction or damages for infringement of this right, subject to numerous exceptions protecting cultural, artistic, and other uses.

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 Substitute Bill:

A person may be liable in a civil action based on the common-law theory of invasion of privacy if he or she impersonates another actual person on a social networking website or online bulletin board and:

- the impersonation was committed without the actual person's consent;
- the impersonator intended to deceive or mislead or to harass, threaten, or intimidate another; and
- the impersonation resulted in injury to the person, which may include injury to reputation or humiliation, injury to professional or financial standing, or physical harm.

An "impersonation" occurs when someone uses an actual person's name or likeness to create an impersonation that another person would reasonably believe or did reasonably believe was or is the actual person being impersonated. A "social networking web site" is a website allowing a user to create an account or profile for purposes of connecting the user's account to other users' accounts, among other things. An "online bulletin board" is a website designed specifically for Internet users to post and respond to online classified advertisements viewable by other Internet users.

The actual person injured by impersonation may seek actual damages, injunctive relief, and declaratory relief. A court may award the prevailing party costs and reasonable attorneys' fees.

The bill's provisions do not apply when an impersonation was:

- for a use set forth in the list of exceptions to Washington's personality rights statute, such as for matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, but not limited to, use in works of art, commentary, satire, and parody;
- for a use that would violate Washington's personality rights statute;
- insignificant, *de minimis*, or incidental; or
- performed by a law enforcement agency as part of a criminal investigation.

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

These provisions do not limit any other civil causes of action or criminal prosecutions.

Substitute Bill Compared to Original Bill:

The original bill created a cause of action against someone who appropriates the reputation, prestige, or social or commercial standing of another person by impersonation through an Internet website or by other electronic means. The original bill did not include exceptions other than one prohibiting liability for Internet service providers, computer hardware or software providers, or website operators or administrators.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) News reports of electronic impersonations have increased. The rise of social networking websites shows great community-building potential. But these sites also provide new ways to humiliate, harass, or otherwise hurt others. In the most notorious case, a person assumed a woman's identity on Craigslist and invited men to sexually assault her in her home. A Washington resident's house was ransacked after someone maliciously advertised a whole-house giveaway online. Locally, a perpetrator recently impersonated a man on Facebook to ask a woman for money. People have used electronic impersonation to commit cyberbullying of school children by setting up fake Facebook pages. Teenagers have more suicidal thoughts when they are victims of cyberbullying. This bill provides a narrow civil remedy for victims of electronic impersonation. The bill fills a gap in an area of the law that is really unclear. Prosecutors already have tools to prosecute impersonators. It is good to see Washington taking a leadership role in brainstorming about how to combat electronic impersonation. Representatives of the technology industry say this is best-written of the bills introduced around the country to address this issue.

(With concerns) The Motion Picture Association of America has concerns about the bill but believes they can be worked out.

(Opposed) None.

Persons Testifying: (In support) Representative Frockt, prime sponsor; Lew McMurrin, Washington Technology Industry Association; Larry Shannon, Washington State Association for Justice; Scott Hazlegrove, Yahoo!; and Mary Fan, University of Washington School of Law.

(With concerns) T.K. Bentler, Motion Picture Association of America.

Persons Signed In To Testify But Not Testifying: None.