

SENATE BILL REPORT

SHB 1652

As Reported by Senate Committee On:
Judiciary, March 18, 2011

Title: An act relating to electronic impersonation.

Brief Description: Regarding electronic impersonation.

Sponsors: House Committee on Judiciary (originally sponsored by 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: Passed House: 2/26/11, 97-0.

Committee Activity: Judiciary: 3/09/11, 3/18/11 [DPA].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Baxter, Carrell, Hargrove, Kohl-Welles, Regala and Roach.

Staff: Kim Johnson (786-7472)

Background: The Washington Supreme Court has held that a common-law right of privacy exists and that individual plaintiffs may sue for invasion 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.

The tort of invasion of privacy generally applies to four distinct types of invasion: intrusion, disclosure, false light, and appropriation. Although Washington courts have expressly recognized some types of invasion of privacy, it does not appear that appropriation has yet been expressly recognized by the courts in reported cases.

The use of electronic bulletin boards, such as Craigslist, and social networking sites, such as Facebook and Myspace, has grown exponentially during recent years. Technology makes it possible to obtain access to another person's profile and change aspects of it, or to create a new account on behalf of another person without the person's knowledge or consent. Other

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users may not be able to determine whether such unauthorized activity on a user's account represents the actions of the true person.

Summary of Bill (Recommended Amendments): A person may be liable in a civil action based on a claim of invasion of privacy when:

- the person impersonates another person on a social networking web site or online bulletin board;
- the impersonation was intentional and was without the actual person's consent;
- the person intended to deceive or mislead for the purpose of harassing, threatening, intimidating, humiliating or defrauding another; and
- the impersonation proximately caused injury to the actual person, including injury to reputation or humiliation, injury to professional or financial standing, or physical harm.

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. "Social networking web site" and "online bulletin board" are defined.

The court may award actual damages, injunctive relief, and declaratory relief as necessary, as well as reasonable attorneys' fees and costs to the prevailing party.

An action may not be brought when the impersonation was insignificant, de minimis, or incidental; performed by a law enforcement agency as part of a lawful criminal investigation; for an excepted use as set forth in Washington's personality rights statute including matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including but not limited to use in works of art, satire or parody; or for a use that would violate Washington's personality rights statute.

Liability, under this act, is not imposed on an Internet service provider, interactive computer service provider, computer hardware or software provider, or web site operator or administrator or employees of those entities.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): 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.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: In 2007 a Tacoma home was stripped bare when a Craigslist ad invited people to come and take all of the homeowner's possessions. There are also incidents of ex-boyfriends posting notices in their ex-girlfriend's names inviting sexual assault. People have also used electronic impersonation to commit cyber bullying of school children by setting up fake Facebook pages.

We've tried to come up with a tightly crafted cause of action to address the problems that are cropping up in these new electronic environs. We do not intend to capture First Amendment speech related to political interests and have been careful to make sure that the language respects that speech. We also have preserved an exception for de minimus or incidental use. This bill reflects a standard that the common law cause of action of invasion of privacy has long developed case law on so we can draw upon for guidance. Noneconomic damages are recognized already under statute, so the damages authorized under this new cause of action are not anything new.

Persons Testifying: PRO: Representative Frockt, prime sponsor; Professor Mary Fan, UW School of Law.