

SENATE BILL REPORT

2SHB 1652

As of February 15, 2012

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: 1/23/12, 95-0.

Committee Activity: Judiciary: 2/15/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: A civil cause of action is established for electronic impersonation in certain contexts. A person may be liable in a civil action for damages based on a claim of invasion of privacy when:

- the person intentionally impersonates another actual person on a social networking website or online bulletin board 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 was the proximate cause of injury to the actual person, to include injury to reputation or humiliation, injury to professional or financial standing, or physical harm.

Impersonates means using an actual person's name or likeness to create an impersonation that another would reasonably believe or did reasonably believe was or is the actual person being impersonated.

The actual person who was impersonated may seek actual damages, injunctive relief, and declaratory relief. The court may award the prevailing party costs and reasonable attorneys' fees. A parent's liability for the acts of a minor child is limited under the current parental liability statute.

The legislation does not apply when the impersonation was:

- for use that would violate the personality rights statutes or would fall under the exception to the personality rights statutes (for matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including works of art, commentary, satire, and parody);
- insignificant, de minimis, or incidental use; or
- performed by a law enforcement agency as part of a lawful criminal investigation.

The legislation may not be construed to impose any liability on a social networking website, online bulletin board, Internet service provider, interactive computer service, computer hardware or software provider, or website operator or administrator or its employees, unless the provider, operator, administrator, or employee is the person doing the impersonation.

The legislation does not limit any other civil cause of action available to a person under statute or common law or any criminal prosecution.

Social networking website means a website that allows a user to create an account or profile for the purposes of, among other things, connecting the user's account or profile to other users' accounts or profiles. A blog is not a social networking website. Online bulletin board means a website that is designed specifically for Internet users to post and respond to online classified advertisements that are viewable by other Internet users.

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: PRO: Many groups came together to perfect this bill. Originally, there were concerns regarding parental liability and blogs. We have since added language that limits parental liability and provides a definition for blogs. This bill is necessary because Facebook and Craigslist have been used to injure persons. In Tacoma, a home was stripped bare when a person placed a false ad for people to come take anything they wanted from the home. In Issaquah, children were prosecuted after impersonating another child which caused the child harm. This bill will provide civil remedies for cases that cannot or are not prosecuted. It is a good step forward. If passed, Washington will be the second state to adopt this type of legislation.

This bill creates a limited cause of action for harm caused by harassment and impersonation in a social network or online bulletin board. It solves a specified problem. It will maintain society's confidence in social networks and online bulletin boards.

Persons Testifying: PRO: Senator Frockt, prime sponsor; Lew McMurrin, WA Technology Industry Assn.