
SUBSTITUTE HOUSE BILL 1652

State of Washington

62nd Legislature

2011 Regular Session

By House 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)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to electronic impersonation; adding a new section
2 to chapter 4.24 RCW; creating a new section; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

3 (1) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise:

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

6 (b) "Impersonates" or "impersonation" means using an actual
7 person's name or likeness to create an impersonation that another
8 person would reasonably believe or did reasonably believe was or is the
9 actual person being impersonated.

10 (c) "Interactive computer service" means any information service,
11 system, or access software provider that provides or enables computer
12 access by multiple users to a computer server, including specifically
13 a service or system that provides access to the internet and such
14 systems operated or services offered by libraries or educational
15 institutions.

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

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

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

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

27 (b) The impersonation was without the actual person's consent;

28 (c) The person intended to deceive or mislead or to harass,
29 threaten, or intimidate another; and

30 (d) The impersonation resulted in injury to the actual person.
31 Injury may include injury to reputation or humiliation, injury to
32 professional or financial standing, or physical harm.

33 (3)(a) The actual person who suffered injury by an impersonation in
34 violation of this section may bring an action to recover actual
35 damages, injunctive relief, and declaratory relief. The court may
36 award actual damages, injunctive relief, and declaratory relief as
37 necessary.

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

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

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

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

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

10 (d) Performed by a law enforcement agency as part of a criminal
11 investigation.

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

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

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