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**SECOND SUBSTITUTE HOUSE BILL 1652**

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**State of Washington**

**62nd Legislature**

**2012 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 01/16/12.

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

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) "Blog" means a web site that is created primarily for the  
7 writer to maintain an online personal journal with reflections,  
8 comments, or hyperlinks provided by the writer.

9            (c) "Impersonates" or "impersonation" means using an actual  
10 person's name or likeness to create an impersonation that another  
11 person would reasonably believe or did reasonably believe was or is the  
12 actual person being impersonated.

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

19           (e) "Online bulletin board" means a web site that is designed  
20 specifically for internet users to post and respond to online  
21 classified advertisements that are viewable by other internet users.

22           (f) "Social networking web site" means a web site that allows a  
23 user to create an account or profile for the user for the purposes of,  
24 among other things, connecting the user's account or profile to other  
25 users' accounts or profiles. A blog is not a social networking web  
26 site.

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

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

31           (b) The impersonation was intentional and without the actual  
32 person's consent;

33           (c) The person intended to deceive or mislead for the purpose of  
34 harassing, threatening, intimidating, humiliating, or defrauding  
35 another; and

36           (d) The impersonation proximately caused injury to the actual  
37 person. Injury may include injury to reputation or humiliation, injury  
38 to professional or financial standing, or physical harm.

1 (3)(a) The actual person who suffered injury by an impersonation in  
2 violation of this section may bring an action to recover actual  
3 damages, injunctive relief, and declaratory relief. The court may  
4 award actual damages, injunctive relief, and declaratory relief as  
5 necessary.

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

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

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

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

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

15 (d) Performed by a law enforcement agency as part of a lawful  
16 criminal investigation.

17 (5) A court of this state may exercise jurisdiction in a suit  
18 brought by a Washington resident or against a defendant who is a  
19 Washington resident. Jurisdiction over any person who is not a  
20 Washington resident may be exercised in a manner consistent with the  
21 laws and Constitution of the state of Washington, including RCW  
22 4.28.185, and the Constitution of the United States.

23 (6)(a) This section may not be construed to impose any liability on  
24 a social networking web site, online bulletin board, internet service  
25 provider, interactive computer service, computer hardware or software  
26 provider, or web site operator or administrator or its employees,  
27 unless the provider, operator, administrator, or employee is the person  
28 impersonating an actual person. Nothing in this section is intended to  
29 preclude other common law causes of action against these entities.

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

33 (7) For the purposes of this section, parental liability is limited  
34 pursuant to RCW 4.24.190.

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