

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2249 Session of
2012

INTRODUCED BY WATSON, PETRI, MARSICO, BAKER, BOYD, D. COSTA,
CREIGHTON, ELLIS, FLECK, GEIST, GILLESPIE, GINGRICH, GROVE,
HARPER, HARRIS, HELM, HESS, KNOWLES, MAJOR, MANN, O'NEILL,
PEIFER, PICKETT, PRESTON, READSHAW, SONNEY, STURLA, SWANGER,
TAYLOR, TRUITT, VULAKOVICH, HICKERNELL, HORNAMAN, MURT AND
DONATUCCI, MARCH 13, 2012

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 2, 2012

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, defining the offense of online impersonation;
4 prescribing a penalty; and providing for damages in actions
5 for online impersonation.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 18 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 4121. Online impersonation.

11 ~~(a) Offense defined. A person commits the offense of online~~ ←
12 ~~impersonation if he uses the name, persona or identifying~~
13 ~~information of another person or of a fictitious person to do~~
14 ~~any of the following with the intent to defraud, intimidate,~~
15 ~~threaten or harass another person:~~

16 ~~(1) create a web page;~~

17 ~~(2) post one or more messages on a commercial social~~

1 ~~networking site;~~

2 ~~(3) send an electronic mail, instant message, text~~
3 ~~message or similar communication;~~

4 ~~(4) open an e-mail account; or~~

5 ~~(5) open an account or profile on a commercial social~~
6 ~~networking site.~~

7 ~~(b) Grading. An offense under this section constitutes a~~
8 ~~misdemeanor of the first degree. Each violation constitutes a~~
9 ~~separate offense.~~

10 ~~(c) Nonapplicability. The provisions of this section shall~~
11 ~~not be applicable to:~~

12 ~~(1) A law enforcement officer acting in the course and~~
13 ~~legitimate scope of the law enforcement officer's duties.~~

14 ~~(2) A person who acts within the course and legitimate~~
15 ~~scope of the person's employment in order to obtain evidence~~
16 ~~of unlawful activity.~~

17 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF ONLINE ←
18 IMPERSONATION IF THE PERSON:

19 (1) USES THE NAME, PERSONA OR IDENTIFYING INFORMATION OF
20 ANOTHER PERSON OR OF A FICTITIOUS PERSON TO DO ANY OF THE
21 FOLLOWING:

22 (I) CREATE A WEB PAGE;

23 (II) POST ONE OR MORE MESSAGES ON A COMMERCIAL
24 SOCIAL NETWORKING SITE;

25 (III) SEND AN ELECTRONIC MAIL, INSTANT MESSAGE, TEXT
26 MESSAGE OR SIMILAR COMMUNICATION;

27 (IV) OPEN AN E-MAIL ACCOUNT; OR

28 (V) OPEN AN ACCOUNT OR PROFILE ON A COMMERCIAL
29 SOCIAL NETWORKING SITE; AND

30 (2) THE PERSON ENGAGES IN ACTIVITY PROHIBITED UNDER ANY

1 OF THE FOLLOWING:

2 (I) SECTION 2706 (RELATING TO TERRORISTIC THREATS);

3 (II) SECTION 2709 (RELATING TO HARASSMENT);

4 (III) SECTION 2709.1 (RELATING TO STALKING);

5 (IV) SECTION 4952 (RELATING TO INTIMIDATION OF
6 WITNESSES OR VICTIMS);

7 (V) SECTION 4953 (RELATING TO RETALIATION AGAINST
8 WITNESS, VICTIM OR PARTY).

9 (B) GRADING.--A VIOLATION OF SUBSECTION (A) SHALL BE
10 CLASSIFIED AS A MISDEMEANOR OF THE SECOND DEGREE OR ONE DEGREE
11 HIGHER IN THE CLASSIFICATION SPECIFIED IN SECTION 106 (RELATING
12 TO CLASSES OF OFFENSES) THAN THE CLASSIFICATION OF THE
13 UNDERLYING OFFENSE SET FORTH IN SUBSECTION (A) (1), WHICHEVER IS
14 GREATER.

15 ~~(d)~~ (C) Construction.--Nothing in this section shall be ←
16 construed to apply to works of public interest, including
17 commentary, satire and parody.

18 ~~(e)~~ (D) Territorial applicability.--A person may be ←
19 convicted under the provisions of this section if the victim or
20 the offender is located within this Commonwealth.

21 ~~(f)~~ (E) Concurrent jurisdiction to prosecute.--In addition ←
22 to the authority conferred upon the Attorney General by the act
23 of October 15, 1980 (P.L.950, No.164), known as the Commonwealth
24 Attorneys Act, the Attorney General shall have the authority to
25 investigate and to institute criminal proceedings for any
26 violation of this section or any series of violations involving
27 more than one county of this Commonwealth or another state. No
28 person charged with a violation of this section by the Attorney
29 General shall have standing to challenge the authority of the
30 Attorney General to investigate or prosecute the case, and if a

1 challenge is made, the challenge shall be dismissed, and no
2 relief shall be made available in the courts of this
3 Commonwealth to the person making the challenge.

4 ~~(g)~~ (F) Definitions.--As used in this section, the following ←
5 words and phrases shall have the meanings given to them in this
6 subsection unless the context clearly indicates otherwise:

7 "Commercial social networking site." A business,
8 organization or other similar entity that operates an Internet
9 website and permits persons to become registered users for the
10 purpose of establishing personal relationships with other users
11 through direct or real-time communication with other users or
12 the creation of web pages or profiles available to the public or
13 to other users. The term does not include an electronic mail
14 program or a message board program.

15 "Document." Any writing, including, but not limited to, a
16 birth certificate, Social Security card, driver's license,
17 nondriver government-issued identification card, baptismal
18 certificate, access device card, employee identification card,
19 school identification card or other identifying information
20 recorded by any other method, including, but not limited to,
21 information stored on a computer, computer disc, computer
22 printout, computer system, or part thereof, or by any other
23 mechanical or electronic means.

24 "Identifying information." Any document, photographic,
25 pictorial or computer image of another person or any fact used
26 to establish identity, including, but not limited to, a name, e-
27 mail address, birth date, Social Security number, driver's
28 license number, nondriver governmental identification number,
29 telephone number, checking account number, savings account
30 number, student identification number, employee or payroll

1 number or electronic signature. The term includes a document,
2 photographic, pictorial or computer image of a fictitious person
3 or any fact used to establish identity as provided in this
4 definition in the case of a fictitious person.

5 Section 2. Title 42 is amended by adding a section to read:
6 § 8316.1. Damages in actions for online impersonation.

7 (a) Cause of action established.--A person may bring a civil
8 cause of action based upon online impersonation as defined in 18
9 Pa.C.S. § 4121 (relating to online impersonation) in order to
10 recover damages for any loss or injury sustained as a result of
11 the violation.

12 (b) Parties authorized to bring action.--An action may be
13 brought by:

14 (1) A natural person.

15 (2) A parent or guardian of a natural person, if the
16 natural person is incompetent or is an individual under 18
17 years of age.

18 (3) A corporation, partnership, limited liability
19 company, business trust, other association, estate, trust or
20 foundation.

21 (c) Damages.--A court of competent jurisdiction may award
22 damages as follows:

23 (1) Actual damages arising from the incident or \$500,
24 whichever is greater. Damages include loss of money,
25 reputation or property, whether real or personal. The court
26 may, in its discretion, award up to three times the actual
27 damages sustained, but not less than \$500.

28 (2) Reasonable attorney fees and court costs.

29 (3) Additional relief the court deems necessary and
30 proper.

1 (d) Other remedies preserved.--Nothing in this section shall
2 be construed to limit the ability of a person to receive
3 restitution pursuant to 18 Pa.C.S. § 1106 (relating to
4 restitution for injuries to person or property).

5 ~~(e) Nonapplicability. The provisions of this section shall~~ ←
6 ~~not be applicable to:~~

7 ~~(1) A law enforcement officer acting in the course and~~
8 ~~legitimate scope of the law enforcement officer's duties.~~

9 ~~(2) A person who acts within the course and legitimate~~
10 ~~scope of the person's employment in order to obtain evidence~~
11 ~~of unlawful activity.~~

12 Section 3. This act shall take effect in 60 days.