

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 764 Session of 2013

INTRODUCED BY WATSON, COHEN, SWANGER, MARSHALL, BIZZARRO, DAVIS, GINGRICH, D. COSTA, DONATUCCI, MILLARD, R. BROWN, BAKER, MULLERY, READSHAW, HESS, KAUFFMAN, C. HARRIS, O'NEILL, M. K. KELLER, GROVE, FLECK, MAJOR, BROOKS, HICKERNELL, SANTARSIERO, PICKETT, MURT, PETRI, MARSICO, CLYMER, DENLINGER, MATZIE, NEILSON, DeLUCA, MILNE, FARRY, MACKENZIE, GRELL, PEIFER AND CALTAGIRONE, FEBRUARY 25, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 7, 2013

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 the person:

13 (1) uses the name, persona or identifying information of  
14 another person or of a fictitious person to do any of the  
15 following:

16 (i) create a web page;

1 (ii) post one or more messages on a commercial  
2 social networking site;

3 (iii) send an electronic mail, instant message, text  
4 message or similar communication;

5 (iv) open an e-mail account; or

6 (v) open an account or profile on a commercial  
7 social networking site; and

8 (2) the person engages in activity prohibited under any  
9 of the following:

10 (i) Section 2706 (relating to terroristic threats);

11 (ii) Section 2709 (relating to harassment);

12 (iii) Section 2709.1 (relating to stalking);

13 (iv) Section 4952 (relating to intimidation of  
14 witnesses or victims);

15 (v) Section 4953 (relating to retaliation against  
16 witness, victim or party).

17 (b) Grading.--A violation of subsection (a) shall be  
18 classified as a misdemeanor of the second degree or one degree  
19 higher in the classification specified in section 106 (relating  
20 to classes of offenses) than the classification of the  
21 underlying offense set forth in subsection (a)(2), whichever is  
22 greater. Each violation constitutes a separate offense.

23 (c) Construction.--Nothing in this section shall be  
24 construed to apply to works of public interest, including  
25 commentary, satire and parody.

26 (d) Territorial applicability.--A person may be convicted  
27 under the provisions of this section if the victim or the  
28 offender is located within this Commonwealth.

29 (e) Concurrent jurisdiction to prosecute.--In addition to  
30 the authority conferred upon the Attorney General by the act of

1 October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
2 Attorneys Act, the Attorney General shall have the authority to  
3 investigate and to institute criminal proceedings for any  
4 violation of this section or any series of violations involving  
5 more than one county of this Commonwealth or another state. No  
6 person charged with a violation of this section by the Attorney  
7 General shall have standing to challenge the authority of the  
8 Attorney General to investigate or prosecute the case, and if a  
9 challenge is made, the challenge shall be dismissed, and no  
10 relief shall be made available in the courts of this  
11 Commonwealth to the person making the challenge.

12 (f) Definitions.--As used in this section, the following  
13 words and phrases shall have the meanings given to them in this  
14 subsection unless the context clearly indicates otherwise:

15 "Commercial social networking site." A business,  
16 organization or other similar entity that operates an Internet  
17 website and permits persons to become registered users for the  
18 purpose of establishing personal relationships with other users  
19 through direct or real-time communication with other users or  
20 the creation of web pages or profiles available to the public or  
21 to other users. The term does not include an electronic mail  
22 program or a message board program.

23 "Document." Any writing, including, but not limited to, a  
24 birth certificate, Social Security card, driver's license,  
25 nondriver government-issued identification card, baptismal  
26 certificate, access device card, employee identification card,  
27 school identification card or other identifying information  
28 recorded by any other method, including, but not limited to,  
29 information stored on a computer, computer disc, computer  
30 printout, computer system, or part thereof, or by any other

1 mechanical or electronic means.

2 "Identifying information." Any document, photographic,  
3 pictorial or computer image of another person or any fact used  
4 to establish identity, including, but not limited to, a name, e-  
5 mail address, birth date, Social Security number, driver's  
6 license number, nondriver governmental identification number,  
7 telephone number, checking account number, savings account  
8 number, student identification number, employee or payroll  
9 number or electronic signature. The term includes a document,  
10 photographic, pictorial or computer image of a fictitious person  
11 or any fact used to establish identity as provided in this  
12 definition in the case of a fictitious person.

13 Section 2. Title 42 is amended by adding a section to read:  
14 § 8316.1. Damages in actions for online impersonation.

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

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

22 (1) A natural person.

23 (2) A parent or guardian of a natural person, if the  
24 natural person is incompetent or is an individual under 18  
25 years of age.

26 (3) A corporation, partnership, limited liability  
27 company, business trust, other association, estate, trust or  
28 foundation.

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

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

6           (2) Reasonable attorney fees and court costs.

7           (3) Additional relief the court deems necessary and  
8           proper.

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

13          (E) NONAPPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL <--  
14          NOT BE APPLICABLE TO:

15               (1) A LAW ENFORCEMENT OFFICER ACTING IN THE COURSE AND  
16               LEGITIMATE SCOPE OF THE LAW ENFORCEMENT OFFICER'S DUTIES.

17               (2) A PERSON WHO ACTS WITHIN THE COURSE AND LEGITIMATE  
18               SCOPE OF THE PERSON'S EMPLOYMENT IN ORDER TO OBTAIN EVIDENCE  
19               OF UNLAWFUL ACTIVITY.

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