

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 REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 25, 2012

AN ACT

1 ~~Amending Title 18 (Crimes and Offenses) of the Pennsylvania~~ ←
2 ~~Consolidated Statutes, defining the offense of online~~
3 ~~impersonation, and prescribing a penalty. AMENDING TITLES 18~~ ←
4 ~~(CRIMES AND OFFENSES) AND 42 (JUDICIARY AND JUDICIAL~~
5 ~~PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES,~~
6 ~~DEFINING THE OFFENSE OF ONLINE IMPERSONATION; PRESCRIBING A~~
7 ~~PENALTY; AND PROVIDING FOR DAMAGES IN ACTIONS FOR ONLINE~~
8 ~~IMPERSONATION.~~

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 ~~Section 1. Title 18 of the Pennsylvania Consolidated~~ ←
12 ~~Statutes is amended by adding a section to read:~~
13 ~~§ 4121. Online impersonation.~~

14 ~~(a) Offense defined. A person commits the offense of online~~
15 ~~impersonation if he uses the name, persona or identifying~~
16 ~~information of another person to do any of the following without~~
17 ~~obtaining the other person's consent and with the intent to~~
18 ~~deceive, harm, defraud, intimidate or threaten any person:~~

- 1           ~~(1) create a web page;~~  
2           ~~(2) post one or more messages on a commercial social~~  
3           ~~networking site; or~~  
4           ~~(3) send an electronic mail, instant message, text~~  
5           ~~message or similar communication.~~

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

9           ~~(c) Nonapplicability. The provisions of this section shall~~  
10           ~~not be applicable to law enforcement officers acting in the~~  
11           ~~course and legitimate scope of their employment.~~

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

1 ~~Section 2. This act shall take effect in 60 days.~~

2 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED  
3 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

4 § 4121. ONLINE IMPERSONATION.

5 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF ONLINE  
6 IMPERSONATION IF HE USES THE NAME, PERSONA OR IDENTIFYING  
7 INFORMATION OF ANOTHER PERSON OR OF A FICTITIOUS PERSON TO DO  
8 ANY OF THE FOLLOWING WITH THE INTENT TO DEFRAUD, INTIMIDATE,  
9 THREATEN OR HARASS ANOTHER PERSON:

10 (1) CREATE A WEB PAGE;

11 (2) POST ONE OR MORE MESSAGES ON A COMMERCIAL SOCIAL  
12 NETWORKING SITE;

13 (3) SEND AN ELECTRONIC MAIL, INSTANT MESSAGE, TEXT  
14 MESSAGE OR SIMILAR COMMUNICATION;

15 (4) OPEN AN E-MAIL ACCOUNT; OR

16 (5) OPEN AN ACCOUNT OR PROFILE ON A COMMERCIAL SOCIAL  
17 NETWORKING SITE.

18 (B) GRADING.--AN OFFENSE UNDER THIS SECTION CONSTITUTES A  
19 MISDEMEANOR OF THE FIRST DEGREE. EACH VIOLATION CONSTITUTES A  
20 SEPARATE OFFENSE.

21 (C) NONAPPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL  
22 NOT BE APPLICABLE TO:

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

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

28 (D) CONSTRUCTION.--NOTHING IN THIS SECTION SHALL BE  
29 CONSTRUED TO APPLY TO WORKS OF PUBLIC INTEREST, INCLUDING  
30 COMMENTARY, SATIRE AND PARODY.

1 (E) TERRITORIAL APPLICABILITY.--A PERSON MAY BE CONVICTED  
2 UNDER THE PROVISIONS OF THIS SECTION IF THE VICTIM OR THE  
3 OFFENDER IS LOCATED WITHIN THIS COMMONWEALTH.

4 (F) CONCURRENT JURISDICTION TO PROSECUTE.--IN ADDITION TO  
5 THE AUTHORITY CONFERRED UPON THE ATTORNEY GENERAL BY THE ACT OF  
6 OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH  
7 ATTORNEYS ACT, THE ATTORNEY GENERAL SHALL HAVE THE AUTHORITY TO  
8 INVESTIGATE AND TO INSTITUTE CRIMINAL PROCEEDINGS FOR ANY  
9 VIOLATION OF THIS SECTION OR ANY SERIES OF VIOLATIONS INVOLVING  
10 MORE THAN ONE COUNTY OF THIS COMMONWEALTH OR ANOTHER STATE. NO  
11 PERSON CHARGED WITH A VIOLATION OF THIS SECTION BY THE ATTORNEY  
12 GENERAL SHALL HAVE STANDING TO CHALLENGE THE AUTHORITY OF THE  
13 ATTORNEY GENERAL TO INVESTIGATE OR PROSECUTE THE CASE, AND IF A  
14 CHALLENGE IS MADE, THE CHALLENGE SHALL BE DISMISSED, AND NO  
15 RELIEF SHALL BE MADE AVAILABLE IN THE COURTS OF THIS  
16 COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

17 (G) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
18 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
19 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

20 "COMMERCIAL SOCIAL NETWORKING SITE." A BUSINESS,  
21 ORGANIZATION OR OTHER SIMILAR ENTITY THAT OPERATES AN INTERNET  
22 WEBSITE AND PERMITS PERSONS TO BECOME REGISTERED USERS FOR THE  
23 PURPOSE OF ESTABLISHING PERSONAL RELATIONSHIPS WITH OTHER USERS  
24 THROUGH DIRECT OR REAL-TIME COMMUNICATION WITH OTHER USERS OR  
25 THE CREATION OF WEB PAGES OR PROFILES AVAILABLE TO THE PUBLIC OR  
26 TO OTHER USERS. THE TERM DOES NOT INCLUDE AN ELECTRONIC MAIL  
27 PROGRAM OR A MESSAGE BOARD PROGRAM.

28 "DOCUMENT." ANY WRITING, INCLUDING, BUT NOT LIMITED TO, A  
29 BIRTH CERTIFICATE, SOCIAL SECURITY CARD, DRIVER'S LICENSE,  
30 NONDRIVER GOVERNMENT-ISSUED IDENTIFICATION CARD, BAPTISMAL

1 CERTIFICATE, ACCESS DEVICE CARD, EMPLOYEE IDENTIFICATION CARD,  
2 SCHOOL IDENTIFICATION CARD OR OTHER IDENTIFYING INFORMATION  
3 RECORDED BY ANY OTHER METHOD, INCLUDING, BUT NOT LIMITED TO,  
4 INFORMATION STORED ON A COMPUTER, COMPUTER DISC, COMPUTER  
5 PRINTOUT, COMPUTER SYSTEM, OR PART THEREOF, OR BY ANY OTHER  
6 MECHANICAL OR ELECTRONIC MEANS.

7 "IDENTIFYING INFORMATION." ANY DOCUMENT, PHOTOGRAPHIC,  
8 PICTORIAL OR COMPUTER IMAGE OF ANOTHER PERSON OR ANY FACT USED  
9 TO ESTABLISH IDENTITY, INCLUDING, BUT NOT LIMITED TO, A NAME, E-  
10 MAIL ADDRESS, BIRTH DATE, SOCIAL SECURITY NUMBER, DRIVER'S  
11 LICENSE NUMBER, NONDRIVER GOVERNMENTAL IDENTIFICATION NUMBER,  
12 TELEPHONE NUMBER, CHECKING ACCOUNT NUMBER, SAVINGS ACCOUNT  
13 NUMBER, STUDENT IDENTIFICATION NUMBER, EMPLOYEE OR PAYROLL  
14 NUMBER OR ELECTRONIC SIGNATURE. THE TERM INCLUDES A DOCUMENT,  
15 PHOTOGRAPHIC, PICTORIAL OR COMPUTER IMAGE OF A FICTITIOUS PERSON  
16 OR ANY FACT USED TO ESTABLISH IDENTITY AS PROVIDED IN THIS  
17 DEFINITION IN THE CASE OF A FICTITIOUS PERSON.

18 SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:  
19 § 8316.1. DAMAGES IN ACTIONS FOR ONLINE IMPERSONATION.

20 (A) CAUSE OF ACTION ESTABLISHED.--A PERSON MAY BRING A CIVIL  
21 CAUSE OF ACTION BASED UPON ONLINE IMPERSONATION AS DEFINED IN 18  
22 PA.C.S. § 4121 (RELATING TO ONLINE IMPERSONATION) IN ORDER TO  
23 RECOVER DAMAGES FOR ANY LOSS OR INJURY SUSTAINED AS A RESULT OF  
24 THE VIOLATION.

25 (B) PARTIES AUTHORIZED TO BRING ACTION.--AN ACTION MAY BE  
26 BROUGHT BY:

27 (1) A NATURAL PERSON.

28 (2) A PARENT OR GUARDIAN OF A NATURAL PERSON, IF THE  
29 NATURAL PERSON IS INCOMPETENT OR IS AN INDIVIDUAL UNDER 18  
30 YEARS OF AGE.

1           (3) A CORPORATION, PARTNERSHIP, LIMITED LIABILITY  
2           COMPANY, BUSINESS TRUST, OTHER ASSOCIATION, ESTATE, TRUST OR  
3           FOUNDATION.

4           (C) DAMAGES.--A COURT OF COMPETENT JURISDICTION MAY AWARD  
5           DAMAGES AS FOLLOWS:

6           (1) ACTUAL DAMAGES ARISING FROM THE INCIDENT OR \$500,  
7           WHICHEVER IS GREATER. DAMAGES INCLUDE LOSS OF MONEY,  
8           REPUTATION OR PROPERTY, WHETHER REAL OR PERSONAL. THE COURT  
9           MAY, IN ITS DISCRETION, AWARD UP TO THREE TIMES THE ACTUAL  
10           DAMAGES SUSTAINED, BUT NOT LESS THAN \$500.

11           (2) REASONABLE ATTORNEY FEES AND COURT COSTS.

12           (3) ADDITIONAL RELIEF THE COURT DEEMS NECESSARY AND  
13           PROPER.

14           (D) OTHER REMEDIES PRESERVED.--NOTHING IN THIS SECTION SHALL  
15           BE CONSTRUED TO LIMIT THE ABILITY OF A PERSON TO RECEIVE  
16           RESTITUTION PURSUANT TO 18 PA.C.S. § 1106 (RELATING TO  
17           RESTITUTION FOR INJURIES TO PERSON OR PROPERTY).

18           (E) NONAPPLICABILITY.--THE PROVISIONS OF THIS SECTION SHALL  
19           NOT BE APPLICABLE TO:

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

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

25           SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.