

S T A T E O F N E W Y O R K

6238--A

2011-2012 Regular Sessions

I N A S S E M B L Y

March 10, 2011

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to enacting the digital impersonation prevention act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "digital
2 impersonation prevention act".
3 S 2. The penal law is amended by adding a new section 190.87 to read
4 as follows:
5 S 190.87 DIGITAL IMPERSONATION.
6 1. (A) A PERSON IS GUILTY OF DIGITAL IMPERSONATION WHEN HE OR SHE,
7 KNOWINGLY, WITH INTENT TO DEFRAUD AND WITHOUT CONSENT, CREDIBLY IMPERSONATES ANOTHER ACTUAL PERSON THROUGH OR ON AN INTERNET WEB SITE OR BY
8 OTHER ELECTRONIC MEANS FOR PURPOSES OF: (I) HARMING, INTIMIDATING,
9 THREATENING OR DEFRAUDING ANOTHER PERSON; (II) TRANSMITTING UNSOLICITED
10 COMMERCIAL SOLICITATIONS OR UNSOLICITED BULK MESSAGES; OR (III) COPYING,
11 ACCESSING, DOWNLOADING OR UTILIZING A CONTACT LIST.
12 (B) FOR PURPOSES OF THIS SECTION, AN IMPERSONATION IS CREDIBLE IF
13 ANOTHER PERSON WOULD REASONABLY BELIEVE, OR DID REASONABLY BELIEVE, THAT
14 THE DEFENDANT WAS OR IS THE PERSON WHO WAS IMPERSONATED.
15 2. FOR PURPOSES OF THIS SECTION: (A) "ELECTRONIC MEANS" SHALL INCLUDE
16 CREATING OR OPENING AN E-MAIL ACCOUNT OR AN ACCOUNT OR PROFILE ON A
17 SOCIAL NETWORKING INTERNET WEB SITE IN ANOTHER PERSON'S NAME; OR ACCESS-
18 ING ANOTHER PERSON'S PRE-EXISTING E-MAIL ACCOUNT OR AN ACCOUNT OR
19 PROFILE ON A SOCIAL NETWORKING INTERNET WEB SITE; OR ALTERING OR CHANG-
20 ING THE PROPERTIES OF AN E-MAIL, OR E-MAIL HEADER, TO APPEAR AS THOUGH
21 THE E-MAIL ORIGINATED FROM A DIFFERENT SOURCE WITHOUT THE EXPRESS
22 CONSENT FROM THE ACCOUNT HOLDER.
23

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 (B) "CONTACT LIST" SHALL INCLUDE ANY LIST OF THIRD-PARTY CONTACT
2 NAMES, ADDRESSES, TELEPHONE NUMBERS, MOBILE PHONE NUMBERS, FACSIMILE
3 NUMBERS, E-MAIL ADDRESSES, INSTANT MESSENGER NAMES, OR OTHER INFORMATION
4 USED FOR CONTACTING INDIVIDUALS.

5 (C) "UNSOLICITED COMMERCIAL SOLICITATIONS" SHALL INCLUDE ANY ADVER-
6 TISEMENT RELATED TO THE AVAILABILITY OR QUALITY OF ANY PROPERTY, GOODS,
7 OR SERVICES OR TRANSMISSION OF A HYPERLINK TO A WEB SITE OR UNIFORM
8 RESOURCE LOCATOR (URL) WHICH HAS ANY MATERIAL ADVERTISING THE AVAILABIL-
9 ITY OR QUALITY OF ANY PROPERTY, GOODS, OR SERVICES.

10 (D) "UNSOLICITED BULK MESSAGES" SHALL INCLUDE THE TRANSMISSION OF AN
11 E-MAIL, INSTANT MESSAGE, OR SOCIAL NETWORKING POST THAT IS PUBLISHED TO
12 MORE THAN ONE UNIQUE RECIPIENT.

13 3. A VIOLATION OF SUBDIVISION ONE OF THIS SECTION SHALL BE PUNISHABLE
14 BY A FINE NOT TO EXCEED ONE THOUSAND DOLLARS OR BY IMPRISONMENT NOT TO
15 EXCEED ONE YEAR, OR BY BOTH THE FINE AND IMPRISONMENT.

16 4. IN ADDITION TO ANY OTHER CIVIL REMEDY AVAILABLE, A PERSON WHO
17 SUFFERS DAMAGE OR LOSS BY REASON OF A VIOLATION OF SUBDIVISION ONE OF
18 THIS SECTION MAY BRING A CIVIL ACTION AGAINST THE VIOLATOR FOR STATUTORY
19 DAMAGES OF FIVE HUNDRED DOLLARS PER OCCURRENCE, COMPENSATORY DAMAGES,
20 AND INJUNCTIVE RELIEF OR OTHER EQUITABLE RELIEF. IF THE COURT FINDS THAT
21 THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION OR THE REGU-
22 LATIONS PRESCRIBED UNDER THIS SECTION, THE COURT MAY, IN ITS DISCRETION,
23 INCREASE THE AMOUNT OF THE AWARD TO AN AMOUNT EQUAL TO NOT MORE THAN
24 THREE TIMES THE AMOUNT AVAILABLE UNDER THIS SUBDIVISION.

25 5. FOR PURPOSES OF THIS SECTION, "OCCURRENCE" SHALL INCLUDE EACH ACT
26 OF CREATING OR OPENING AN E-MAIL ACCOUNT OR AN ACCOUNT OR PROFILE ON A
27 SOCIAL NETWORKING INTERNET WEB SITE; ACCESSING ANOTHER PERSON'S PRE-EX-
28 ISTING E-MAIL ACCOUNT, ACCOUNT OR PROFILE ON A SOCIAL NETWORKING INTER-
29 NET WEB SITE OR CONTACT LIST; ALTERING OR CHANGING THE PROPERTIES OF AN
30 E-MAIL, OR E-MAIL HEADER, TO APPEAR AS THOUGH THE E-MAIL ORIGINATED FROM
31 A DIFFERENT SOURCE; AND THE TRANSMISSION OF AN UNSOLICITED COMMERCIAL
32 SOLICITATION TO A UNIQUE RECIPIENT.

33 6. (A) THIS SECTION MAY NOT BE CONSTRUED TO IMPOSE ANY LIABILITY ON AN
34 INTERNET SERVICE PROVIDER, INTERACTIVE COMPUTER SERVICE, COMPUTER HARD-
35 WARE OR SOFTWARE PROVIDER, OR WEB SITE OPERATOR OR ADMINISTRATOR, OR ITS
36 EMPLOYEES, UNLESS THE PROVIDER, OPERATOR, ADMINISTRATOR, OR EMPLOYEE IS
37 THE PERSON IMPERSONATING AN ACTUAL PERSON. NOTHING IN THIS SECTION IS
38 INTENDED TO PRECLUDE OTHER COMMON LAW CAUSES OF ACTION AGAINST THESE
39 ENTITIES.

40 (B) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT ANY OTHER CIVIL CAUSE
41 OF ACTION AVAILABLE TO A PERSON UNDER STATUTE OR COMMON LAW OR ANY CRIM-
42 INAL PROSECUTION.

43 S 3. This act shall take effect on the first of November next succeed-
44 ing the date upon which it shall have become a law.