

SUBJECT: Creating offenses for online and electronic messaging impersonation

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson,
Vaught, Vo

0 nays

2 absent — Hodge, Riddle

WITNESSES: For — Bob Alford; Katrina Daniels, Bexar County District Attorney's Office; R. Sean McCleskey, U.S. Secret Service - San Antonio Field Office; (*Registered, but did not testify*, Elmer Beckworth; Marc Chavez, Lubbock County District Attorney's Office; Rick Harrison; Kevin Petroff, Harris County District Attorney's Office; John Rolater, Collin County Criminal District Attorney's Office; Aaron Setliff, The Texas Council on Family Violence; Ballard C. Shapleigh, El Paso District Attorney's Office)

Against — Rebecca Bernhardt, American Civil Liberties Union of Texas

On — Shannon Edmonds, Texas District and County Attorneys Association; Kristin Etter, Texas Criminal Defense Lawyers Association

DIGEST: CSHB 2003 would create an offense punishable as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for creating a webpage on a social networking site in someone else's name without their permission and with the intent to harm, defraud, intimidate, or threaten someone.

The bill would create an offense punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for sending an email, instant message, text, or other electronic communication in another person's identity without permission and with the intent to harm or defraud someone. The offense would be punishable as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the actor intended to solicit a response from emergency personnel.

The bill would provide a defense to prosecution for employees of:

- social networking sites;
- Internet service providers;
- interactive computer services;
- telecommunication providers; and
- video or cable service providers.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 2003 would establish appropriate punishments for a new wave of serious crimes that have come about with the advent of social networking sites and text messaging. Current law does not address instances of malicious social networking impersonation or text messaging harassment. The state should take these actions seriously.

Harming others is not protected under the free speech rights in the U.S. Constitution. CSHB 2003 is narrowly focused to avoid any possible infringement on free speech rights. In order to be prosecuted for an offense in the bill, an individual would have to assume someone else's identity and use it maliciously. Law enforcement officials and prosecutors would be able to exercise discretion in determining which circumstances warranted harsher penalties.

**OPPONENTS
SAY:**

CSHB 2003 would compromise the First Amendment right to freedom of speech. The term "harm" in the bill could be interpreted broadly, including something as simple as harming a person's reputation. CSHB 2003 could criminalize a juvenile prank that could be considered "harmful" to someone. The bill would make a felony behavior that may have been just annoying. The bill should limit punishments to cover actions that threaten bodily injury.

The bill would overlap with the current statute that covers cyberspace harassment offenses. Instances of cyberspace harassment and impersonation are being prosecuted effectively under current law. Stealing someone's identity online is prosecuted as identity theft, and stalking already has legal guidelines governing it.