



HOUSE BILL 341: Protection from Online Impersonation.

2021-2022 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 14, 2021
Introduced by:	Reps. White, Strickland	Prepared by:	Robert Ryan
Analysis of:	Third Edition		Jennifer Bedford*
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OVERVIEW: House Bill 341 would create a new crime and new civil cause of action for online impersonation and create a new law prohibiting misleading or fictitious communications.

CURRENT LAW:

G.S. 14-100. Obtaining property by false pretenses.

It is a Class H felony to knowingly obtain something of value worth up to \$100,00, from another person by making a false representation intended to deceive. It is a Class C felony if the value is more than \$100,000.

G.S. 14-113.20 – G.S. 14-113.25. Identify Theft.

It is a Class G felony to knowingly use certain "identifying information" belonging to another person with the intent to represent to be that person for certain fraudulent purposes. It is a Class F felony if the victim suffers an arrest. Trafficking "identifying information" is a Class E felony.

G.S. 14-458.1. Cyber-bullying.

Using a computer or computer network to take certain harassing actions directed at a minor was prohibited by statute. In State v. Bishop¹ the North Carolina Supreme Court ruled that 14-458.1(a)(1)(d) violated the First Amendment and was unconstitutional. This provision stated that it was "unlawful for any person to use a computer or computer network" to "post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor ... with the intent to intimidate or torment a minor."

G.S. 75-1.1. Methods of competition, acts and practices regulated.

Chapter 75 of the General Statutes regulates monopolies, trusts, and consumer protection. G.S. 75-1.1(a) prohibits unfair or deceptive acts or practices affecting commerce. G.S. 75-1.1(b) defines "commerce" to mean "all business activities, however denominated, but does not include professional services rendered by a member of a learned profession." Violations of G.S. 75-1.1 may be enforced by civil actions brought by the North Carolina Attorney General or by an injured party.

BILL ANALYSIS:

Section 1 of House Bill 341 would create a new crime and civil action for online impersonation.

The section would make it a Class H felony for a person to knowingly and without consent impersonate another person on a Web site or through other electronic means for the purposes of harming, intimidating, threatening, or defrauding another person.

¹ 368 N.C. 869 (2016)

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The section would also create a civil action for a person harmed, intimidated, threatened, or defrauded by an imposter. The plaintiff in the civil case could recover the following:

- Actual damages, but not less than liquidated damages, computed at the rate of \$1,000 a day for each day of the violation or \$10,000, whichever is higher.
- Punitive damages.
- Reasonable attorneys' fees and other litigation costs.

Law enforcement officers and individuals licensed as Private Protective Services are exempt from the requirements of the section if they are engaged in the discharge of their professional duties and are not engaged in improper activities.

Section 2 of House Bill 341 would create a new law prohibiting misleading or fictitious communications designed to gather information.

A violation of this section would be a violation of the unfair trade practice law contained in G.S. 75-1.1. The plaintiff could recover damages, punitive damages exceeding \$50,000 per violation, and attorneys fees.

For the purposes of this section public and private educational institutions conducting research are specifically defined to be a "person" and to be conducting "commerce."

EFFECTIVE DATE: Section 2 of House Bill 341 would become effective October 1, 2021. The remainder of the bill would become effective December 1, 2021, and would apply to acts committed on or after that date.

BACKGROUND: Section 1 of House Bill 341 is very similar to the Second Edition of House Bill 794- Protection from Online Personation (2015 Regular Session) which passed second and third readings in the House of Representatives on April 29, 2015.

**Brad Krehely, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.*