

SENATE BILL REPORT

ESHB 1335

As Reported by Senate Committee On:
Law & Justice, March 28, 2023

Title: An act relating to the unauthorized publication of personal identifying information.

Brief Description: Concerning the unauthorized publication of personal identifying information.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Hansen, Berry, Farivar, Taylor, Ramel, Simmons, Kloba, Bateman, Reed and Lekanoff).

Brief History: Passed House: 2/27/23, 79-16.

Committee Activity: Law & Justice: 3/27/23, 3/28/23 [DPA, w/oRec].

Brief Summary of Amended Bill

- Prohibits publication of an individual's personal identifying information without consent when the publication is made with intent or knowledge the information will be used to harm the individual, or reckless disregard for the risk of such harm, and the publication causes physical injury, significant economic injury, mental anguish, fear of serious bodily injury or death, or a substantial life disruption.
- Establishes a civil cause of action for violations, subject to various exceptions.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon, Valdez and Wagoner.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Torres and Wilson, L..

Staff: Tim Ford (786-7423)

Background: Doxing generally refers to the disclosure of another individual's personal information for the purpose of harming or harassing that individual.

Doxing is not specifically prohibited under Washington law. Certain conduct related to doxing could qualify as a criminal offense—for example, harassment or stalking, or an actionable civil tort like invasion of privacy or intentional infliction of emotional distress—depending on the specific circumstances, and information disclosed.

At least six states have imposed various criminal or civil restrictions on doxing, with some states restricting doxing generally and others restricting doxing that targets specific individuals like peace officers, public officials, and health care workers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: Prohibition on Doxing. No person may publish an individual's personal identifying information when:

- the publication is made without the express consent of the individual whose information is published;
- the publication is made with intent or knowledge that the personal identifying information will be used to harm the individual whose information is published; or reckless disregard for the risk the personal identifying information will be used to harm the individual whose information is published; and
- the publication causes the individual whose information is published to suffer physical injury; significant economic injury; mental anguish; fear of serious bodily injury or death for themselves or a close relation to themselves; or a substantial life disruption.

Civil Action. A person whose information is published in violation of this restriction may bring a civil action against the person who published the information, and any person who knowingly benefits from participation in a venture they knew or should have known has engaged in a violation of these restrictions. An action may be brought in any county in which an element of the violation occurred or in which an individual whose information was published resides.

A prevailing claimant may recover compensatory damages, punitive damages, statutory damages of \$5,000 per violation, costs and reasonable attorneys' fees, injunctive relief, and other relief deemed appropriate by the court. A court may issue a temporary restraining order, or temporary or permanent injunction, to prevent disclosure or continued disclosure of a party's personal identifying information.

Exceptions, Defenses, and Construction. The foregoing restrictions are subject to exceptions. A person does not violate this section by providing:

- another person's personal identifying information with the reporting of criminal activity to an employee of a law enforcement, intelligence, or other government agency in the United States, or in connection with the activities of a law enforcement, intelligence, or other government agency in the United States, but only if the information is believed to be accurate and provided in good faith;
- personal identifying information in connection with an exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Washington State Constitution;
- personal identifying information to, or in the course of acting as or on behalf of, news media as defined by Washington law;
- personal identifying information to a requestor in response to a request under the Public Records Act;
- personal identifying information when required to do so by any federal, state, or local law or regulation, or court rule or court order, but only if the information is believed to be accurate and provided in good faith;
- personal identifying information in connection with a lawful requirement for a court filing or recording;
- personal identifying information permitted under the federal Gramm-Leach-Bliley Act and Consumer Financial Protection Bureau Regulation P, consistent with privacy policy disclosures provided pursuant to such regulation;
- personal identifying information in compliance with the Fair Credit Reporting Act or Fair Debt Collection Practices Act;
- personal identifying information in a consumer alert or public notice by government agencies arising from a regulatory, civil, or criminal investigation, complaint, or enforcement action;
- personal identifying information for information communicated within or to a government agency, corporation, company, partnership, labor union, or another legal entity, or to any employees or agents thereof, if the communication meets certain purpose, privacy, accuracy, and good faith requirements;
- personal identifying information on behalf of a state agency, the health benefit exchange, a tribal nation, a contracted service provider of a state agency or the health benefit exchange, or the lead organization or a data vendor of the all-payer health care claims database if the information was provided in a manner legally permitted under federal or state law or regulation.

It is not a defense that the information at issue was voluntarily given to the publisher, previously publicly disclosed, or readily discoverable through research or investigation. The act shall not be construed to conflict with immunity provisions of the federal Communications Decency Act, or the federal Civil Rights Act, or to prohibit constitutionally protected activities.

The act shall be liberally construed and applied to promote its purpose to deter doxing, protect persons from doxing, and provide adequate remedies to victims of doxing.

Defined Terms. Several terms are expressly defined.

Doxing means unauthorized publication of personal identifying information with intent or knowledge that the information will be used to harm the individual whose information is published, or with reckless disregard for the risk the information will be used to harm the individual whose information is published.

Harm means bodily injury, death, harassment, or stalking.

Mental anguish means emotional distress or emotional suffering as evidenced by anxiety, fear, torment, or apprehension that may or may not result in a physical manifestation of mental anguish or a mental health diagnosis. The mental anguish must be protracted and not merely trivial or transitory.

Personal identifying information means any information that can be used to distinguish or trace an individual's identity, including without limitation name, prior legal name, alias, mother's maiden name, or date or place of birth, in combination with any other information that is linked or linkable to an individual such as:

- social security number, home address, mailing address, phone number, email address, social media accounts, or biometric data;
- medical, financial, education, consumer, or employment information, data, or records;
- any other sensitive private information that is linked or linkable to a specific identifiable individual, such as gender identity, sexual orientation, or any sexually intimate visual depiction; or
- any information, including without limitation usernames and passwords, that enables access to a person's email accounts, social media accounts, electronic forum accounts, chat or instant message accounts, cloud storage accounts, banking or financial accounts, computer networks, computers or phones, teleconferencing services, video-teleconferencing services, or other digital meeting rooms.

Publish means to circulate, deliver, distribute, disseminate, post, transmit, or otherwise make available to another person, through any oral, written, visual, or electronic communication.

Substantial life disruption means that a person significantly modifies their actions, routines, employment, residence, appearance, name, or contact information to avoid or protect against an actor who has obtained or is using the person's personal identifying information, or because of the course of conduct of an actor who has obtained or is using the person's personal identifying information. Examples include, without limitation, changing a phone number, changing an electronic mail address, deleting personal electronic accounts,

significantly decreasing use of the internet, moving from an established residence, changing daily routines, changing routes to and from work, changing employment or work schedule, or losing time from work or a job.

Additional terms are defined.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Provides an exception on behalf of a state agency, the health benefit exchange, a tribal nation, a contracted service provider of a state agency or the health benefit exchange, or the lead organization or a data vendor of the all payer claims database, if the information was provided in a manner legally permitted under federal or state law or regulation.
- Clarifies an exception for information provided in response to a public records request without regard to whether the request is lawful, or in conformance with the requirements of the Public Records Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Striking Amendment: *The committee recommended a different version of the bill than what was heard.* PRO: Provide access to justice for victims of doxing. Abusers will look for any way to exercise power or control over victims. The online world altered bigotry. We need stronger laws to protect victims of doxing. They found my home address and published it. Extremism is a threat to my life. Doxing as a form of intimidation and harassment is on the rise. Doxing encourages hatred and violence by the publication of names, and home addresses. It has a chilling effect on free speech of victims. Librarians are harassed. I defended LGBTQ books and I received threats to me and my wife. My family was on heightened security. In 2006, the Jewish federation was the victim of hate crime and it killed an employee. Hate is filling public spaces. It is our responsibility to allow victims to seek justice. Doxing is a workplace issue. Workers in the election office were doxed. We can't expect our workforce to be effective if doxing is the norm.

CON: There is a price of freedom, this bill is unconstitutional. The price of tyranny is higher and this bill chills free speech. There are laws for illegal harassment that already apply. This bill is an affront to the 1st Amendment.

Persons Testifying: PRO: Gavin Downing; Max Patashnik, Jewish Community Relations

Council; Joe Kendo, Washington State Labor Council; Rebecca Houghton; Miri Cypers, Anti-Defamation League; Dean Lynch, Spokane County Human Rights Task Force.

CON: Rebecca Faust.

Persons Signed In To Testify But Not Testifying: No one.