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COMMENTS IN OPPOSITION TO 14-H 7845, RELATING TO CRIMINAL OFFENSES

Because of the inherent First Amendment issues associated with regulating activities involving computers or other forms of electronic communications, laws must be carefully and narrowly crafted to avoid infringing on free speech rights. We believe that this bill, like many of the other computer crime bills being considered by the committee, fail to toe that critical constitutional line.

This bill bars individuals from using “the name or persona of another person” to create a web page, send e-mail or post on a social networking site without the person’s consent and “with the intent to harm, defraud, intimidate or threaten any person.” The statute also bars individuals from using “the name or persona of a public official” without their consent to create web pages or leave posts “with the intent to induce another to submit to such pretended official authority, to solicit fund or otherwise to act in reliance upon that pretense to the other person’s detriment.”

These broadly defined offenses could criminalize a variety of protected speech. Because the conduct that is prohibited is aimed at public officials, it could easily apply to political speech, which can sometimes be designed to “harm” or “intimidate” a lawmaker, two terms that are nowhere defined in the bill. It is also important to note that “using” a person’s name does not necessarily mean pretending to be that person, as the bill is worded. Any hard-hitting political post or email from a candidate attacking a lawmaker’s character or alleged shady dealings could be deemed to have used the lawmaker’s name with the intent to harm or intimidate him in violation of section (b)(1).

If a candidate includes in an email the phone number of his incumbent opponent, suggesting (wrongly) that the opponent would like to hear from constituents about their position on an issue, knowing that the callers will be strongly opposed to the official’s position, the candidate may have committed a felony under this bill. Satirical web sites could also fall within the wide range of this legislation, depending on how “reasonable” it is for the site visitor to believe the object of the satire authorized the communication, or whether the site could be deemed “intimidating” to the subject.

In light of the unintended consequences of this bill through its overly-broad wording, and its potential impact on free speech rights, the ACLU opposes its passage.