

Committee Substitute for
Committee Substitute for Senate Bill No. 284

An act relating to video voyeurism; creating s. 810.145, F.S.; providing definitions; prohibiting a person from secretly viewing, recording, or broadcasting images of another person for the purpose of entertainment, sexual arousal, profit, or abuse when that other person is in a location that provides a reasonable expectation of privacy; prohibiting a person from secretly filming, recording, or broadcasting images of another person under or through that other person's clothing for the purpose of viewing that other person's body or undergarments without knowledge and consent of the person viewed; prohibiting a person from disseminating images when the person disseminating the images knows or has reason to believe that the images were recorded in violation of law; prohibiting a person from selling images to another for consideration when the person selling the images knows or has reason to believe that the images were recorded in violation of law; prohibiting a person from disseminating images that were recorded in violation of law to another person for that person to sell the images to others; providing for certain exceptions; providing criminal penalties; defining a previous conviction or adjudication of delinquency; amending s. 932.701, F.S.; defining the term "contraband article" to include any imaging equipment, format, or device used in violation of law; amending s. 932.7055, F.S.; requiring agencies seizing images of persons recorded in violation of law to destroy the images; providing that the seizing agency may not retain or sell the images; amending s. 932.707, F.S.; conforming a cross-reference; reenacting ss. 705.101(6) and 932.703(4), F.S., relating to definitions of lost or abandoned property and the seizure of a vessel, motor vehicle, aircraft, other personal property, or real property in or on which a contraband article is located, to incorporate the amendment to s. 932.701, F.S., in references thereto; amending s. 877.26, F.S.; providing a limited exception to a prohibition against a merchant observing customers in dressing, fitting, or changing rooms or restrooms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 810.145, Florida Statutes, is created to read:

810.145 Video voyeurism.—

(1) As used in this section, the term:

(a) "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.

(b) "Imaging device" means any mechanical, digital, or electronic viewing device, still camera, camcorder, motion picture camera, or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

(c) “Place and time when a person has a reasonable expectation of privacy” means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person’s undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

(d) “Privately exposing the body” means exposing a sexual organ.

(2) A person commits the offense of video voyeurism if that person:

(a) For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person’s knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

(b) For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person’s knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or

(c) For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person’s knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person; or

(b) Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

(5) This section does not apply to any:

(a) Law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or

(d) Dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. s. 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. s. 2711(2). For purposes of this section, the exceptions to the definition of “electronic communication” set forth in 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) do not apply, but are included within the definition of the term.

(6) Except as provided in subsection (7), a person who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

Section 2. Paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) “Contraband article” means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state’s burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

Section 3. Present subsections (2) through (8) of section 932.7055, Florida Statutes, are redesignated as subsections (3) through (9), respectively, and a new subsection (2) is added to that section, to read:

932.7055 Disposition of liens and forfeited property.—

(2) Notwithstanding subsection (1), a seizing agency must destroy any image and the medium on which the image is recorded, including, but not limited to, a photograph, video tape, diskette, compact disc, or fixed disk made in violation of s. 810.145 when the image and the medium on which it is recorded is no longer needed for an official purpose. The agency may not sell or retain any image.

Section 4. Section 932.707, Florida Statutes, is amended to read:

932.707 Penalty for noncompliance with reporting requirements.—Any seizing agency that ~~which~~ fails to comply with the reporting requirements

as described in s. ~~932.7055(9)(a)~~ s. ~~932.7055(8)(a)~~, is subject to a civil fine of \$5,000 payable to the General Revenue Fund. However, such agency will not be subject to the fine if, within 60 days ~~after~~ of receipt of written notification from the Department of Law Enforcement of the noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with ~~those said~~ requirements. The Department of Law Enforcement shall submit any substantial noncompliance to the Office of the Chief Financial Officer, which shall be responsible for the enforcement of this section.

Section 5. For the purpose of incorporating the amendment made by this act to section 932.701, Florida Statutes, in references thereto, subsection (6) of section 705.101, Florida Statutes, is reenacted to read:

705.101 Definitions.—As used in this chapter:

(6) “Unclaimed evidence” means any tangible personal property, including cash, not included within the definition of “contraband article,” as provided in s. 932.701(2), which was seized by a law enforcement agency, was intended for use in a criminal or quasi-criminal proceeding, and is retained by the law enforcement agency or the clerk of the county or circuit court for 60 days after the final disposition of the proceeding and to which no claim of ownership has been made.

Section 6. For the purpose of incorporating the amendment made by this act to section 932.701, Florida Statutes, in references thereto, subsection (4) of section 932.703, Florida Statutes, is reenacted to read:

932.703 Forfeiture of contraband article; exceptions.—

(4) In any incident in which possession of any contraband article defined in s. 932.701(2)(a) constitutes a felony, the vessel, motor vehicle, aircraft, other personal property, or real property in or on which such contraband article is located at the time of seizure shall be contraband subject to forfeiture. It shall be presumed in the manner provided in s. 90.302(2) that the vessel, motor vehicle, aircraft, other personal property, or real property in which or on which such contraband article is located at the time of seizure is being used or was attempted or intended to be used in a manner to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of a contraband article defined in s. 932.701(2).

Section 7. Section 877.26, Florida Statutes, is amended to read:

877.26 Direct observation, videotaping, or visual surveillance of customers in merchant’s dressing room, etc., prohibited; penalties.—

(1) It is unlawful for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant’s dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy. However, a merchant may directly observe a customer from outside such room if the observation is within the scope of the merchant’s duties and the

observation does not otherwise violate s. 810.14 or s. 810.145 or if the customer invites or consents to the presence of the merchant in the room.

(2) As used in this subsection, the term “merchant” means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

~~(3)(2)~~ Any merchant who violates subsection (1) commits ~~is guilty of a~~ misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. This act shall take effect July 1, 2004.

Approved by the Governor May 12, 2004.

Filed in Office Secretary of State May 12, 2004.