

HOUSE BILL 1663

By Moore

AN ACT to amend Tennessee Code Annotated, Title 29;
Title 39; Title 40 and Title 66, relative to privacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following language as a new, appropriately designated chapter:

29-39-101.

As used in this chapter, unless the context requires otherwise:

(1) "Actual knowledge" means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of § 29-39-102(a); provided, the plaintiff shall establish actual knowledge by clear and convincing evidence;

(2) "For a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration; provided, however, a visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted; and

(3) "Personal and familial activity" includes, but is not limited to, intimate details of the plaintiff's personal life, interactions with the plaintiff's family or significant others, other aspects of the plaintiff's private affairs or concerns, or the activities of victims of crime in circumstances under which § 29-39-102(a) would

apply; provided, however, personal and familial activity does not include any misconduct described in § 29-39-103.

29-39-102.

(a)

(1) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another without permission, or otherwise commits a trespass, in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

(2) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

(3) An assault or false imprisonment committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subsections (b), (c), and (e).

(b) A defendant who violates subsection (a) is liable for:

(1) Up to three (3) times the amount of any general and special damages that are proximately caused by the violation of this section;

(2) Punitive damages;

(3) If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section; and

(4) A civil fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(c) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate subsection (a) is liable for:

(1) Any general, special, and consequential damages resulting from each violation;

(2) Punitive damages; and

(3) A civil fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

(d)

(1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subsection (a) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold or offered for sale, the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subsection (a) and provided compensation, consideration, or remuneration, monetary or otherwise, for the

rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) Any person that publicly transmits, publishes, broadcasts, sells or offers for sale, in any form, medium, format or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold or offered for sale, by another person, is exempt from liability under this section.

(3) If a person's first public transmission, publication, broadcast, or sale or offer for sale, of a visual image, sound recording, or other physical impression that was taken or captured in violation of subsection (a) does not constitute a violation of this section, that person's subsequent public transmission, publication, broadcast, sale or offer for sale, in any form, medium, format or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(4) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in this state in violation of subsection (a) after July 1, 2011, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of this state.

(e) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subsection (a).

(f) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

29-39-103.

This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, a suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely affecting the public welfare, health or safety.

29-39-104.

(a) A proceeding to recover civil fines described in § 29-39-102(b) and (c) may be brought in any court of competent jurisdiction by a county or city official responsible for prosecuting civil violations and collecting civil fines.

(b) Fines collected pursuant to this section shall be allocated, as follows:

(1) One-half (1/2) shall be allocated to the prosecuting agency; and

(2) One-half (1/2) shall be deposited in the privacy enforcement fund, as

created in § 29-39-105.

29-39-105.

(a) There is created in the state treasury a fund to be known as the privacy enforcement fund. Moneys deposited in this fund pursuant to § 29-39-104 shall be used by the treasurer to provide grants to counties and cities for reimbursing any outstanding enforcement costs resulting from, and not otherwise reimbursed by, this chapter. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in this section.

(b) Interest accruing on investments and deposits of the privacy enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(c) Moneys in the privacy enforcement fund account shall be invested by the state treasurer in accordance with § 9-4-603.

29-39-106.

This section shall not be construed to limit all other rights or remedies of the plaintiff, county or city in law or equity. The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2011, the public welfare requiring it.