

HOUSE BILL 1960

By Williams R

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 13, Part 1; Title 39, Chapter 13, Part 3; Title 39, Chapter 13, Part 6; Title 39, Chapter 14, Part 4 and Title 55, Chapter 10, Part 2, relative to capturing or intending to capture images, recordings, or physical impressions of persons other than elected officials.

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

SECTION 1. Tennessee Code Annotated, Section 39-13-101(b), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1)

(A) Except as otherwise provided in this subdivision (b)(1), assault is a Class A misdemeanor; provided, that if the offense is committed against a law enforcement officer under this section, then the maximum fine shall be five thousand dollars (\$5,000).

(B) Assault is a Class B misdemeanor if the offense is committed under subdivision (a)(3).

(C) Assault is a Class A misdemeanor if the offense is committed with the intent to capture any type of visual image, sound recording, or other physical impression of any person except an elected official; provided, that the maximum fine shall be five thousand dollars (\$5,000).

SECTION 2. Tennessee Code Annotated, Section 39-13-302(b), is amended by adding the following language at the end of the subsection:

; except, that if the offense is committed with the intent to capture any type of visual image, sound recording, or other physical impression of any person who is not an elected official, then the maximum fine shall be five thousand dollars (\$5,000).

SECTION 3. Tennessee Code Annotated, Title 39, Chapter 13, Part 6, is amended by adding the following as a new, appropriately designated section:

39-13-6\_\_.

(a) As used in this section:

(1) "For a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. 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. "For a commercial purpose" does not include the transmission, post or display of a visual image, sound recording, or other physical impression on a social network;

(2) "Immediate family" means a spouse, child, step-child, brother, sister, son-in-law, daughter-in-law, parent, or grandparent;

(3) "Personal and familial activity" means an activity occurring on the property of the individual or the property of the individual's immediate family, and includes, but is not limited to, an activity involving interactions with the individual's family or significant others or an activity involving other aspects of the individual's private affairs; and

(4) "Social network" means any online community of people who share interests and activities, or who are interested in exploring the

interests and activities of others, and which provides ways for users to interact.

(b) It is an offense for a person to knowingly capture any type of visual image, sound recording, or other physical impression of any person, except an elected official, engaging in a personal or familial activity under the following circumstances:

(1) The act was done in a manner that is offensive to a reasonable person;

(2) The individual has a reasonable expectation of privacy; and

(3) The act was done without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian.

(c) It is an offense for a person to knowingly spy upon, observe, or otherwise view any individual, other than an elected official, with the intent to capture any type of visual image, sound recording, or other physical impression of the individual engaging in a personal or familial activity under the following circumstances:

(1) The act was done in a manner that is offensive to a reasonable person;

(2) The individual has a reasonable expectation of privacy; and

(3) The act was done without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian.

(d) If an offense under this section was committed for a commercial purpose, the defendant shall be subject to disgorgement to the individual of any

proceeds or other consideration obtained as a result of the violation of this section; except, that this subsection (d) shall not apply to the following:

(1) Any person who transmits, posts, or displays a visual image, sound recording, or other physical impression of an individual on a social network;

(2) Any Internet service provider operating a web site that offers a social network on which a visual image, sound recording, or other physical impression of an individual is transmitted, posted or displayed; and

(3) Any telecommunications, broadband or other similar service provider acting solely as an intermediary for the transmission, posting or display of a visual image, sound recording, or other physical impression of an individual on a social network.

(e) A violation of this section is a Class A misdemeanor and the maximum fine shall be five thousand dollars (\$5,000).

(f) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental entities who, in the course and scope of their employment, and supported by reasonable suspicion, intend to capture or 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.

(g) Nothing in this section shall preclude prosecution under any other applicable offense.

SECTION 4. Tennessee Code Annotated, Section 39-14-405(f), is amended by adding the following at the end of the subsection:

; except, that if the offense is committed with the intent to capture any type of visual image, sound recording, or other physical impression of an owner who is not an elected official, then the maximum fine shall be five thousand dollars (\$5,000).

SECTION 5. Tennessee Code Annotated, Section 39-14-407(a), is amended by adding the following at the end of the first sentence:

; except, that if the offense is committed with the intent to capture any type of visual image, sound recording, or other physical impression of a patron or customer, other than an elected official, of a business establishment located upon the property, then it is a Class A misdemeanor and the maximum fine shall be five thousand dollars (\$5,000).

SECTION 6. Tennessee Code Annotated, Section 55-10-205(d), is amended by adding the following language at the end of the subsection:

; except, that if the offense is committed with the intent to capture any type of visual image, sound recording, or other physical impression of another person who is not an elected official then it is a Class A misdemeanor and the maximum fine shall be five thousand dollars (\$5,000);

SECTION 7. 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 8. This act shall take effect July 1, 2011, the public welfare requiring it.