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HOUSE BILL 2477

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State of Washington

65th Legislature

2018 Regular Session

By Representative McDonald

1 AN ACT Relating to providing citizens with a civil process to  
2 stop nonconsensual capture of their private, personal, and familial  
3 activities by trespassers; adding a new section to chapter 4.24 RCW;  
4 and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW  
7 to read as follows:

8 (1) A person is liable for physical invasion of privacy when the  
9 person knowingly enters onto the land or into the airspace above the  
10 land of another person without permission or otherwise commits a  
11 trespass for the purpose of capturing any type of visual image or  
12 other physical impression of the person engaging in a private,  
13 personal, or familial activity, and the invasion occurs in a manner  
14 that is offensive to a reasonable person.

15 (2) A person is liable for constructive invasion of privacy when  
16 the person, through the use of any device and regardless of whether  
17 there is a physical trespass, attempts to capture any type of visual  
18 image or other physical impression of the person engaging in a  
19 private, personal, or familial activity, if the image or other  
20 physical impression could not have been achieved without a physical

1 trespass absent the use of the device and the invasion occurs in a  
2 manner that is offensive to a reasonable person.

3 (3) This section does not impair or limit any otherwise lawful  
4 activities of law enforcement personnel or employees of governmental  
5 agencies, who, in the course and scope of their employment and  
6 consistent with the state and federal Constitutions, attempt to  
7 capture any type of visual image, sound recording, or other physical  
8 impression of a person during an investigation, surveillance, or  
9 monitoring of any conduct to obtain evidence of suspected illegal  
10 activity or other misconduct, the suspected violation of any  
11 administrative rule or regulation, suspected fraudulent conduct, or  
12 any activity involving a violation of law or business practices or  
13 conduct of public officials adversely affecting the public welfare,  
14 health, or safety.

15 (4) For purposes of this section:

16 (a) "Private, personal, or familial activity" includes, but is  
17 not limited to:

18 (i) Intimate details of the plaintiff's personal life under  
19 circumstances in which the plaintiff has a reasonable expectation of  
20 privacy;

21 (ii) Interaction with the plaintiff's family or significant  
22 others under circumstances in which the plaintiff has a reasonable  
23 expectation of privacy; and

24 (iii) Any activity that occurs on a residential property under  
25 circumstances in which the plaintiff has a reasonable expectation of  
26 privacy.

27 (b) "Private, personal, or familial activity" does not include  
28 illegal or otherwise criminal activity.

29 (5)(a) A person who commits any act described in subsection (1)  
30 or (2) of this section is liable for up to three times the amount of  
31 any general and special damages that are proximately caused by the  
32 violation of this section, or liquidated damages of five hundred  
33 dollars per instance, together with costs and reasonable attorneys'  
34 fees for the prevailing party. If the plaintiff proves that the  
35 invasion of privacy resulted in financial compensation, a court may  
36 order that any moneys be forfeited to the plaintiff.

37 (b) In addition to the liability imposed by (a) of this  
38 subsection, a person who commits any act described in subsection (1)  
39 or (2) of this section is subject to a civil fine of not less than  
40 five thousand dollars and not more than fifty thousand dollars.

1           (6) In any action pursuant to this section, the court may grant  
2 equitable relief including, but not limited to, an injunction and a  
3 restraining order against future violations of subsection (1) or (2)  
4 of this section.

5           (7) It is not a defense to a violation of this section that no  
6 image or physical impression was captured or sold.

7           NEW SECTION.   **Sec. 2.**   If any provision of this act or its  
8 application to any person or circumstance is held invalid, the  
9 remainder of the act or the application of the provision to other  
10 persons or circumstances is not affected.

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