

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1706

SPONSOR: Senator Meek

SUBJECT: Privacy in merchant's dressing rooms

DATE: March 31, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Currently, it is not a crime in Florida to secretly observe or videotape another in a private setting, so long as the observing or videotaping is done without a lewd, lascivious, or indecent intent.

This bill makes it a criminal offense for:

- ▶ any merchant,
- ▶ to directly observe or make use of video cameras or other surveillance devices,
- ▶ in order to observe or record customers who are using the merchant's dressing room, fitting room, changing room, or rest room.

Merchant is defined as "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."

Any merchant who commits this offense is guilty of a first degree misdemeanor. Thus, a person who is convicted of this offense would be subject to a maximum sentence of up to one year in jail and a fine of up to \$1,000.

This bill takes effect on July 1, 1999.

This bill creates an unnumbered section of the Florida Statutes.

## II. Present Situation:

***Voyeurism prohibited.*** The 1998 Legislature created the criminal offense of voyeurism in s. 810.14, F.S. A person commits voyeurism when:

- ▶ he or she, with lewd, lascivious, or indecent intent,

- ▶ secretly observes, photographs, films, videotapes, or records another person,
- ▶ when such other person is located in a dwelling, structure, or conveyance, and
- ▶ such location provides a reasonable expectation of privacy.

A person's first violation is punished as a first degree misdemeanor (1-year jail maximum). s. 810.14(2), F.S. A person's second or subsequent violation is punished as a third-degree felony (5-year jail maximum) for subsequent convictions. s. 810.14(3), F.S.

Florida statutes contain no other provisions which prohibit the secret observing or videotaping of another in a private setting. While s. 934.03, F.S., provides criminal penalties for those who intercept any wire, oral, or electronic communication, by its terms, this statute is not applicable to the surreptitious videotaping or observing of another in a private setting.

Consequently, so long as the observing or videotaping is done without a lewd, lascivious, or indecent intent, it is not a crime to secretly observe or videotape another.

***Intrusion upon seclusion is a tort.*** However, in Florida invasion of privacy is recognized as an intentional tort (a civil wrong). Invasion of privacy includes what is known as "intrusion upon seclusion." *Purrelli v. State Farm Fire and Cas. Co.* 698 So.2d 618, (Fla. 2d DCA 1997). Intrusion upon seclusion has been defined as a tort committed by "[o]ne who intentionally intrudes, physically or otherwise upon the solitude or seclusion of another." *Restatement (Second) of Torts* s. 652B (1977); *See also Purrelli* (chiropractor allegedly took surreptitious and inappropriate videos of a female employee, who was also a patient, during treatment sessions).

### III. Effect of Proposed Changes:

This bill makes it a criminal offense for:

- ▶ any merchant,
- ▶ to directly observe or make use of video cameras or other surveillance devices,
- ▶ in order to observe or record customers who are using the merchant's dressing room, fitting room, changing room, or rest room.

Merchant is defined as "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." This definition is taken from s. 815.015, F.S., relating to retail and farm theft.

Any merchant who commits this offense is guilty of a first degree misdemeanor. Thus, a person who is convicted of this offense would be subject to a maximum sentence of up to one year in jail and a fine of up to \$1,000. ss. 775.082, 775.083, F.S.

***Affected parties.*** In order to violate the bill's provisions, a merchant or a merchant's agent or employee must directly observe or *make use of* video cameras or other surveillance devices. The interpretation of the phrase "*make use of*" is critical in assessing the bill's scope. For example, a store manager, employee, or security officer could all be considered to be "*making use of*" a video camera placed in a changing room under store policy. This would depend on the unique fact patterns of a given case.

**Use of room.** The bill applies to those observing or video taping “customers in the merchant’s dressing room, fitting room, changing room or rest room when such room provides a reasonable expectation of privacy.” Consequently, like the voyeurism statute, s. 810.14, F.S., the room must provide a “reasonable expectation of privacy.” This phrase should limit the scope of the bill so as not to cover a customer entering or exiting a changing stall, even if the customer enters or exits into a semi-private area, which could be deemed part of the dressing room, but where the customer has a diminished expectation of privacy.

This bill takes effect on July 1, 1999.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

In determining whether the customer has a “reasonable expectation of privacy,” the courts will probably look to the substantial body of case law determining whether persons subject to warrantless searches have a “reasonable expectation of privacy” protected by the Fourth Amendment.

The test applied was established in *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed 2d 576 (1967): “(1) Has the individual manifested a subjective expectation of privacy in the object of the challenged search; (2) If so, is society prepared to recognize that expectation as reasonable.” *Sarantopoulus v. State*, 629 So. 2d 121, 122 (Fla. 1993), summarizing the *Katz* test.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill prohibits merchants or a merchant's agent or employee from observing or video taping persons in dressing rooms, it does not require that they incur any costs in complying. Of course, merchants and their employees are subject to a fine of up to \$1,000.

**C. Government Sector Impact:**

This bill creates a new first-degree misdemeanor which may impact the county courts and jails. However, because the bill's subject is narrow, any impact would probably be insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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