

By the Committees on Judiciary; Communication and Public Utilities; and Senator Aronberg

308-2511-04

1                                   A bill to be entitled  
2           An act relating to video voyeurism; creating s.  
3           810.145, F.S.; providing definitions;  
4           prohibiting a person from secretly viewing,  
5           recording, or broadcasting images of another  
6           person for the purpose of entertainment, sexual  
7           arousal, profit, or abuse when that other  
8           person is in a location that provides a  
9           reasonable expectation of privacy; prohibiting  
10          a person from secretly filming, recording, or  
11          broadcasting images of another person under or  
12          through that other person's clothing for the  
13          purpose of viewing that other person's body or  
14          undergarments without knowledge and consent of  
15          the person viewed; prohibiting a person from  
16          disseminating images when the person  
17          disseminating the images knows or has reason to  
18          believe that the images were recorded in  
19          violation of law; prohibiting a person from  
20          selling images to another for consideration  
21          when the person selling the images knows or has  
22          reason to believe that the images were recorded  
23          in violation of law; prohibiting a person from  
24          disseminating images that were recorded in  
25          violation of law to another person for that  
26          person to sell the images to others; providing  
27          for certain exceptions; providing criminal  
28          penalties; defining a previous conviction or  
29          adjudication of delinquency; amending s.  
30          932.701, F.S.; defining the term "contraband  
31          article" to include any imaging equipment,

1 format, or device used in violation of law;  
2 amending s. 932.7055, F.S.; requiring agencies  
3 seizing images of persons recorded in violation  
4 of law to destroy the images; providing that  
5 the seizing agency may not retain or sell the  
6 images; amending s. 932.707, F.S.; conforming a  
7 cross-reference; reenacting ss. 705.101(6) and  
8 932.703(4), F.S., relating to definitions of  
9 lost or abandoned property and the seizure of a  
10 vessel, motor vehicle, aircraft, other personal  
11 property, or real property in or on which a  
12 contraband article is located, to incorporate  
13 the amendment to s. 932.701, F.S., in  
14 references thereto; amending s. 877.26, F.S.;  
15 providing a limited exception to a prohibition  
16 against a merchant observing customers in  
17 dressing, fitting, or changing rooms or  
18 restrooms; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 810.145, Florida Statutes, is  
23 created to read:

24 810.145 Video voyeurism.--

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

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

29 (b) "Imaging device" means any mechanical, digital, or  
30 electronic viewing device, still camera, camcorder, motion  
31 picture camera, or any other instrument, equipment, or format

1 capable of recording, storing, or transmitting visual images  
2 of another person.

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

11 (d) "Privately exposing the body" means exposing a  
12 sexual organ.

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

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

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

31

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

8           (3) A person commits the offense of video voyeurism  
9 dissemination if that person, knowing or having reason to  
10 believe that an image was created in a manner described in  
11 this section, intentionally disseminates, distributes, or  
12 transfers the image to another person.

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

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

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

22           (5) This section does not apply to any:

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

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

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

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

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

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

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

23           Section 2. Paragraph (a) of subsection (2) of section  
24 932.701, Florida Statutes, is amended to read:

25           932.701 Short title; definitions.--

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

27           (a) "Contraband article" means:

28           1. Any controlled substance as defined in chapter 893  
29 or any substance, device, paraphernalia, or currency or other  
30 means of exchange that was used, was attempted to be used, or  
31 was intended to be used in violation of any provision of

1 chapter 893, if the totality of the facts presented by the  
2 state is clearly sufficient to meet the state's burden of  
3 establishing probable cause to believe that a nexus exists  
4 between the article seized and the narcotics activity, whether  
5 or not the use of the contraband article can be traced to a  
6 specific narcotics transaction.

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

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

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

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

27           6. Any real property, including any right, title,  
28 leasehold, or other interest in the whole of any lot or tract  
29 of land, which was used, is being used, or was attempted to be  
30 used as an instrumentality in the commission of, or in aiding  
31 or abetting in the commission of, any felony, or which is

1 acquired by proceeds obtained as a result of a violation of  
2 the Florida Contraband Forfeiture Act.

3 7. Any personal property, including, but not limited  
4 to, equipment, money, securities, books, records, research,  
5 negotiable instruments, currency, or any vessel, aircraft,  
6 item, object, tool, substance, device, weapon, machine, or  
7 vehicle of any kind in the possession of or belonging to any  
8 person who takes aquaculture products in violation of s.  
9 812.014(2)(c).

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

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

14 10. Any personal property, including, but not limited  
15 to, any imaging device, used in violation of s. 810.145,  
16 photograph, film, or other recorded image, including an image  
17 recorded on videotape, a compact disc, digital tape, or fixed  
18 disk, recorded in violation of s. 810.145.

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

23 932.7055 Disposition of liens and forfeited  
24 property.--

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

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

3           932.707 Penalty for noncompliance with reporting  
4 requirements.--Any seizing agency that ~~which~~ fails to comply  
5 with the reporting requirements as described in s.  
6 932.7055(9)(a)~~s. 932.7055(8)(a)~~, is subject to a civil fine  
7 of \$5,000 payable to the General Revenue Fund. However, such  
8 agency will not be subject to the fine if, within 60 days  
9 after ~~of~~ receipt of written notification from the Department  
10 of Law Enforcement of the noncompliance with the reporting  
11 requirements of the Florida Contraband Forfeiture Act, the  
12 agency substantially complies with those ~~said~~ requirements.  
13 The Department of Law Enforcement shall submit any substantial  
14 noncompliance to the Office of the Chief Financial Officer,  
15 which shall be responsible for the enforcement of this  
16 section.

17           Section 5. For the purpose of incorporating the  
18 amendment made by this act to section 932.701, Florida  
19 Statutes, in references thereto, subsection (6) of section  
20 705.101, Florida Statutes, is reenacted to read:

21           705.101 Definitions.--As used in this chapter:

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

30           Section 6. For the purpose of incorporating the  
31 amendment made by this act to section 932.701, Florida



1 Statutes, in references thereto, subsection (4) of section  
2 932.703, Florida Statutes, is reenacted to read:

3 932.703 Forfeiture of contraband article;  
4 exceptions.--

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

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

21 877.26 Direct observation, videotaping, or visual  
22 surveillance of customers in merchant's dressing room, etc.,  
23 prohibited; penalties.--

24 (1) It is unlawful for any merchant to directly  
25 observe or make use of video cameras or other visual  
26 surveillance devices to observe or record customers in the  
27 merchant's dressing room, fitting room, changing room, or  
28 restroom when such room provides a reasonable expectation of  
29 privacy. However, a merchant may directly observe a customer  
30 from outside such room if the observation is within the scope  
31 of the merchant's duties and the observation does not

1 otherwise violate s. 810.14 or s. 810.145 or if the customer  
2 invites or consents to the presence of the merchant in the  
3 room.

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

8 (3)~~(2)~~ Any merchant who violates subsection (1)  
9 commits is guilty of a misdemeanor of the first degree,  
10 punishable as provided in s. 775.082 or s. 775.083.

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

12  
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14 COMMITTEE SUBSTITUTE FOR  
15 CS for Senate Bill 284

16 This CS makes the following changes:

- 17 - Provides exceptions for certain electronic communications  
18 services, such as providers of wire or oral  
19 communications, tone-only paging communications, remote  
20 computing services, tracking devices, or electronic funds  
21 transfer.
- 22 - Provides a limited exception for a merchant observing  
23 customers in dressing, fitting or changing rooms or  
24 restrooms, where the observation is within the scope of  
25 the merchant's duties, and does not otherwise violate  
26 certain laws, or if the customer invites or consents to  
27 the merchant's presence.
- 28 - Revises language providing for a third degree felony for  
29 a violator convicted or adjudicated delinquent two or  
30 more times previously, to a violator previously convicted  
31 or adjudicated delinquent of a violation of this section.
- Clarifies that an agency that has received illegal video  
voyeurism images through forfeiture, must destroy any  
image and the medium upon which the image is recorded  
when it is no longer needed for an official purpose. .