

CHAMBER ACTION

1 The Committee on Public Safety & Crime Prevention recommends the
2 following:

3
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to video voyeurism; creating s. 810.145,
8 F.S.; providing definitions; prohibiting a person from
9 intentionally using or installing, or permitting the use
10 or installation of, an imaging device to secretly view,
11 record, or broadcast images of another person for the
12 purpose of entertainment, sexual arousal, profit, or abuse
13 when that other person is in a location that provides a
14 reasonable expectation of privacy; prohibiting a person
15 from using an imaging device to secretly view, record, or
16 broadcast images of another person under or through that
17 other person's clothing for the purpose of viewing that
18 other person's body or undergarments without the consent
19 of the person being viewed; prohibiting a person from
20 disseminating images when the person disseminating the
21 images knows that the images were recorded in violation of
22 law; prohibiting a person from selling images to another
23 for consideration when the person selling the images knows

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24 that the images were recorded in violation of law;
25 prohibiting a person from disseminating images that were
26 recorded in violation of law to another person for that
27 person to sell the images to others; providing for certain
28 exceptions; providing criminal penalties; defining a
29 previous conviction or adjudication of delinquency;
30 amending s. 877.26, F.S.; providing circumstances in which
31 a merchant or a merchant's employee is deemed not to have
32 directly observed a customer; amending s. 932.701, F.S.;
33 defining the term "contraband article" to include any
34 imaging equipment, format, or device used in violation of
35 law; amending s. 932.7055, F.S.; requiring agencies
36 seizing images of persons recorded in violation of law to
37 destroy the images; providing that the seizing agency may
38 not retain or sell the images; amending s. 932.707, F.S.;
39 conforming a cross reference; reenacting ss. 705.101(6)
40 and 932.703(4), F.S., relating to definitions of the terms
41 "unclaimed evidence" and "contraband article" and the
42 seizure of a vessel, motor vehicle, aircraft, other
43 personal property, or real property in or on which a
44 contraband article is located, to incorporate the
45 amendment to s. 932.701, F.S., in references thereto;
46 providing an effective date.

47
48 Be It Enacted by the Legislature of the State of Florida:

49
50 Section 1. Section 810.145, Florida Statutes, is created
51 to read:

52 810.145 Video voyeurism.--
 53 (1) As used in this section, the term:
 54 (a) "Broadcast" means electronically transmitting a visual
 55 image with the intent that it be viewed by another person.
 56 (b) "Imaging device" means any mechanical, digital, or
 57 electronic viewing device, still camera, camcorder, motion
 58 picture camera, or any other instrument, equipment, or format
 59 capable of recording, storing, or transmitting visual images of
 60 another person.
 61 (c) "Place and time when a person has a reasonable
 62 expectation of privacy" means a place and time when a reasonable
 63 person would believe that he or she could fully disrobe in
 64 privacy, without being concerned that his or her undressing was
 65 being viewed, recorded, or broadcasted by another, including,
 66 but not limited to, the interior of a bathroom, changing room,
 67 fitting room, dressing room, or tanning booth.
 68 (d) "Privately exposing the body" means exposing a sexual
 69 organ.
 70 (2) A person commits the offense of video voyeurism if
 71 that person:
 72 (a) For his or her own amusement, entertainment, sexual
 73 arousal, gratification, or profit, or for the purpose of
 74 degrading or abusing another person, intentionally uses or
 75 installs an imaging device to secretly view, broadcast, or
 76 record a person, without that person's knowledge or consent, who
 77 is dressing, undressing, or privately exposing the body, at a
 78 place and time when that person has a reasonable expectation of
 79 privacy;

80 (b) For the amusement, entertainment, sexual arousal,
 81 gratification, or profit of another, or on behalf of another,
 82 intentionally permits the use or installation of an imaging
 83 device to secretly view, broadcast, or record a person, without
 84 that person's knowledge or consent, who is dressing, undressing,
 85 or privately exposing the body, at a place and time when that
 86 person has a reasonable expectation of privacy; or

87 (c) For the amusement, entertainment, sexual arousal,
 88 gratification, or profit of oneself or another, or on behalf of
 89 oneself or another, intentionally uses an imaging device to
 90 secretly view, broadcast, or record under or through the
 91 clothing being worn by another person, without that person's
 92 knowledge or consent, for the purpose of viewing the body of, or
 93 the undergarments worn by, that person.

94 (3) A person commits the offense of video voyeurism
 95 dissemination if that person, knowing that an image was created
 96 in violation of this section, intentionally disseminates,
 97 distributes, or transfers the image to another person.

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

100 (a) Knowing that an image was created in violation of this
 101 section, sells the image for consideration to another person; or

102 (b) Having created the image in violation of this section,
 103 disseminates, distributes, or transfers the image to another
 104 person for that person to sell the image to others.

105 (5) Except for the dissemination, distribution, or
 106 transfer of images unrelated to the purpose of security, law
 107 enforcement, or surveillance, this section does not apply to:

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108 (a) Any law enforcement agency conducting surveillance for
109 a law enforcement purpose;

110 (b) Any security system when a written notice is
111 conspicuously posted on the premises stating that a video
112 surveillance system has been installed for the purpose of
113 security for the premises;

114 (c) Any video surveillance device that is installed and
115 operated in such a manner that the presence of the device is
116 clearly and immediately obvious; or

117 (d) The dissemination, distribution, or transfer of images
118 subject to this section by a provider of an electronic
119 communication service as defined in 18 U.S.C. s. 2510(15), or a
120 provider of a remote computing service as defined in 18 U.S.C.
121 s. 2711(2). For purposes of this section, the exceptions to the
122 definitions of the term "electronic communication" set forth in
123 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) shall not apply, but
124 rather shall be included within the definition of the term.

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

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

132 (8) For purposes of this section, a person has previously
133 been convicted of or adjudicated delinquent for a violation of
134 this section if the violation resulted in a conviction that was

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135 sentenced separately, or an adjudication of delinquency entered
 136 separately, prior to the current offense.

137 Section 2. Section 877.26, Florida Statutes, is amended to
 138 read:

139 877.26 Direct observation, videotaping, or visual
 140 surveillance of customers in merchant's dressing room, etc.,
 141 prohibited; penalties.--

142 (1) It is unlawful for any merchant to directly observe or
 143 make use of video cameras or other visual surveillance devices
 144 to observe or record customers in the merchant's dressing room,
 145 fitting room, changing room, or restroom when such room provides
 146 a reasonable expectation of privacy. As used in this subsection,
 147 the term "merchant" means an owner or operator, or the agent,
 148 consignee, employee, lessee, or officer of an owner or operator,
 149 of any premises or apparatus used for retail purchase or sale of
 150 any merchandise.

151 (2) For purposes of this section, a merchant or a
 152 merchant's employee does not directly observe a customer if the
 153 customer knows or has reason to be aware of the presence of the
 154 merchant or the merchant's employee in the merchant's dressing
 155 room, fitting room, changing room, or restroom, even when such
 156 room provides a reasonable expectation of privacy.

157 ~~(3)(2)~~ Any merchant who violates subsection (1) is guilty
 158 of a misdemeanor of the first degree, punishable as provided in
 159 s. 775.082 or s. 775.083.

160 Section 3. Paragraph (a) of subsection (2) of section
 161 932.701, Florida Statutes, is amended to read:

162 932.701 Short title; definitions.--

163 (2) As used in the Florida Contraband Forfeiture Act:
 164 (a) "Contraband article" means:
 165 1. Any controlled substance as defined in chapter 893 or
 166 any substance, device, paraphernalia, or currency or other means
 167 of exchange that was used, was attempted to be used, or was
 168 intended to be used in violation of any provision of chapter
 169 893, if the totality of the facts presented by the state is
 170 clearly sufficient to meet the state's burden of establishing
 171 probable cause to believe that a nexus exists between the
 172 article seized and the narcotics activity, whether or not the
 173 use of the contraband article can be traced to a specific
 174 narcotics transaction.
 175 2. Any gambling paraphernalia, lottery tickets, money,
 176 currency, or other means of exchange which was used, was
 177 attempted, or intended to be used in violation of the gambling
 178 laws of the state.
 179 3. Any equipment, liquid or solid, which was being used,
 180 is being used, was attempted to be used, or intended to be used
 181 in violation of the beverage or tobacco laws of the state.
 182 4. Any motor fuel upon which the motor fuel tax has not
 183 been paid as required by law.
 184 5. Any personal property, including, but not limited to,
 185 any vessel, aircraft, item, object, tool, substance, device,
 186 weapon, machine, vehicle of any kind, money, securities, books,
 187 records, research, negotiable instruments, or currency, which
 188 was used or was attempted to be used as an instrumentality in
 189 the commission of, or in aiding or abetting in the commission
 190 of, any felony, whether or not comprising an element of the

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191 felony, or which is acquired by proceeds obtained as a result of
192 a violation of the Florida Contraband Forfeiture Act.

193 6. Any real property, including any right, title,
194 leasehold, or other interest in the whole of any lot or tract of
195 land, which was used, is being used, or was attempted to be used
196 as an instrumentality in the commission of, or in aiding or
197 abetting in the commission of, any felony, or which is acquired
198 by proceeds obtained as a result of a violation of the Florida
199 Contraband Forfeiture Act.

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

206 8. Any motor vehicle offered for sale in violation of s.
207 320.28.

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

210 10. Any personal property, including, but not limited to,
211 any imaging device used during the course of committing an
212 offense in violation of s. 810.145, photograph, film, or other
213 recorded image, including an image recorded on a videotape,
214 compact disc, digital tape, or fixed disk, recorded in violation
215 of s. 810.145.

216 Section 4. Present subsections (2) through (8) of section
217 932.7055, Florida Statutes, are renumbered as subsections (3)

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218 through (9), respectively, and a new subsection (2) is added to
219 said section, to read:

220 932.7055 Disposition of liens and forfeited property.--
221 (2) Notwithstanding subsection (1), a seizing agency must
222 destroy any image and the medium on which the image is recorded,
223 including, but not limited to, a photograph, videotape,
224 diskette, compact disc, or fixed disk made in violation of s.
225 810.145. The agency may not sell or retain any image.

226 Section 5. Section 932.707, Florida Statutes, is amended
227 to read:

228 932.707 Penalty for noncompliance with reporting
229 requirements.--Any seizing agency that ~~which~~ fails to comply
230 with the reporting requirements as described in s.
231 932.7055(9)(a) ~~s. 932.7055(8)(a)~~, is subject to a civil fine of
232 \$5,000 payable to the General Revenue Fund. However, such agency
233 will not be subject to the fine if, within 60 days after ~~of~~
234 receipt of written notification from the Department of Law
235 Enforcement of the noncompliance with the reporting requirements
236 of the Florida Contraband Forfeiture Act, the agency
237 substantially complies with those ~~said~~ requirements. The
238 Department of Law Enforcement shall submit any substantial
239 noncompliance to the Office of the Chief Financial Officer,
240 which shall be responsible for the enforcement of this section.

241 Section 6. For the purpose of incorporating the amendment
242 to section 932.701, Florida Statutes, in a reference thereto,
243 subsection (6) of section 705.101, Florida Statutes, is
244 reenacted to read:

245 705.101 Definitions.--As used in this chapter:

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

254 Section 7. For the purpose of incorporating the amendment
 255 to section 932.701, Florida Statutes, in references thereto,
 256 subsection (4) of section 932.703, Florida Statutes, is
 257 reenacted to read:

258 932.703 Forfeiture of contraband article; exceptions.--

259 (4) In any incident in which possession of any contraband
 260 article defined in s. 932.701(2)(a) constitutes a felony, the
 261 vessel, motor vehicle, aircraft, other personal property, or
 262 real property in or on which such contraband article is located
 263 at the time of seizure shall be contraband subject to
 264 forfeiture. It shall be presumed in the manner provided in s.
 265 90.302(2) that the vessel, motor vehicle, aircraft, other
 266 personal property, or real property in which or on which such
 267 contraband article is located at the time of seizure is being
 268 used or was attempted or intended to be used in a manner to
 269 facilitate the transportation, carriage, conveyance,
 270 concealment, receipt, possession, purchase, sale, barter,
 271 exchange, or giving away of a contraband article defined in s.
 272 932.701(2).

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