

CHAMBER ACTION

1 The Committee on Appropriations recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

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

49 |
50 | Be It Enacted by the Legislature of the State of Florida:
51 |

52 Section 1. Section 810.145, Florida Statutes, is created
53 to read:

54 810.145 Video voyeurism.--

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

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

58 (b) "Imaging device" means any mechanical, digital, or
59 electronic viewing device, still camera, camcorder, motion
60 picture camera, or any other instrument, equipment, or format
61 capable of recording, storing, or transmitting visual images of
62 another person.

63 (c) "Place and time when a person has a reasonable
64 expectation of privacy" means a place and time when a reasonable
65 person would believe that he or she could fully disrobe in
66 privacy, without being concerned that his or her undressing was
67 being viewed, recorded, or broadcasted by another, including,
68 but not limited to, the interior of a bathroom, changing room,
69 fitting room, dressing room, or tanning booth.

70 (d) "Privately exposing the body" means exposing a sexual
71 organ.

72 (2) A person commits the offense of video voyeurism if
73 that person:

74 (a) For his or her own amusement, entertainment, sexual
75 arousal, gratification, or profit, or for the purpose of
76 degrading or abusing another person, intentionally uses or
77 installs an imaging device to secretly view, broadcast, or
78 record a person, without that person's knowledge and consent,
79 who is dressing, undressing, or privately exposing the body, at

80 | a place and time when that person has a reasonable expectation
 81 | of privacy;

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

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

96 | (3) A person commits the offense of video voyeurism
 97 | dissemination if that person, knowing or having reason to
 98 | believe that an image was created in a manner described in this
 99 | section, intentionally disseminates, distributes, or transfers
 100 | the image to another person.

101 | (4) A person commits the offense of commercial video
 102 | voyeurism dissemination if that person:

103 | (a) Knowing or having reason to believe that an image was
 104 | created in a manner described in this section, sells the image
 105 | for consideration to another person; or

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106 (b) Having created the image in a manner described in this
107 section, disseminates, distributes, or transfers the image to
108 another person for that person to sell the image to others.

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

112 (a) Any law enforcement agency conducting surveillance for
113 a law enforcement purpose;

114 (b) Any security system when a written notice is
115 conspicuously posted on the premises stating that a video
116 surveillance system has been installed for the purpose of
117 security for the premises;

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

121 (d) The dissemination, distribution, or transfer of images
122 subject to this section by a provider of an electronic
123 communication service as defined in 18 U.S.C. s. 2510(15), or a
124 provider of a remote computing service as defined in 18 U.S.C.
125 s. 2711(2). For purposes of this section, the exceptions to the
126 definitions of the term "electronic communication" set forth in
127 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) shall not apply, but
128 rather shall be included within the definition of the term.

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

132 (7) A person who violates this section and who has
133 previously been convicted of or adjudicated delinquent for any

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134 violation of this section commits a felony of the third degree,
 135 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

136 (8) For purposes of this section, a person has previously
 137 been convicted of or adjudicated delinquent for a violation of
 138 this section if the violation resulted in a conviction that was
 139 sentenced separately, or an adjudication of delinquency entered
 140 separately, prior to the current offense.

141 Section 2. Section 877.26, Florida Statutes, is amended to
 142 read:

143 877.26 Direct observation, videotaping, or visual
 144 surveillance of customers in merchant's dressing room, etc.,
 145 prohibited; penalties.--

146 (1) It is unlawful for any merchant to directly observe or
 147 make use of video cameras or other visual surveillance devices
 148 to observe or record customers in the merchant's dressing room,
 149 fitting room, changing room, or restroom when such room provides
 150 a reasonable expectation of privacy. However, a merchant may
 151 directly observe a customer from outside such room if the
 152 observation is within the scope of the merchant's duties and the
 153 observation does not otherwise violate s. 810.14 or s. 810.145
 154 or if the customer invites or consents to the presence of the
 155 merchant in the room.

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

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160 (3)~~(2)~~ Any merchant who violates subsection (1) commits ~~is~~
 161 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 162 provided in s. 775.082 or s. 775.083.

163 Section 3. Paragraph (a) of subsection (2) of section
 164 932.701, Florida Statutes, is amended to read:

165 932.701 Short title; definitions.--

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

167 (a) "Contraband article" means:

168 1. Any controlled substance as defined in chapter 893 or
 169 any substance, device, paraphernalia, or currency or other means
 170 of exchange that was used, was attempted to be used, or was
 171 intended to be used in violation of any provision of chapter
 172 893, if the totality of the facts presented by the state is
 173 clearly sufficient to meet the state's burden of establishing
 174 probable cause to believe that a nexus exists between the
 175 article seized and the narcotics activity, whether or not the
 176 use of the contraband article can be traced to a specific
 177 narcotics transaction.

178 2. Any gambling paraphernalia, lottery tickets, money,
 179 currency, or other means of exchange which was used, was
 180 attempted, or intended to be used in violation of the gambling
 181 laws of the state.

182 3. Any equipment, liquid or solid, which was being used,
 183 is being used, was attempted to be used, or intended to be used
 184 in violation of the beverage or tobacco laws of the state.

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

187 5. Any personal property, including, but not limited to,
188 any vessel, aircraft, item, object, tool, substance, device,
189 weapon, machine, vehicle of any kind, money, securities, books,
190 records, research, negotiable instruments, or currency, which
191 was used or was attempted to be used as an instrumentality in
192 the commission of, or in aiding or abetting in the commission
193 of, any felony, whether or not comprising an element of the
194 felony, or which is acquired by proceeds obtained as a result of
195 a violation of the Florida Contraband Forfeiture Act.

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

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

209 8. Any motor vehicle offered for sale in violation of s.
210 320.28.

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

213 10. Any personal property, including, but not limited to,
214 any imaging device used during the course of committing an

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215 offense in violation of s. 810.145, photograph, film, or other
 216 recorded image, including an image recorded on a videotape,
 217 compact disc, digital tape, or fixed disk, recorded in violation
 218 of s. 810.145.

219 Section 4. Present subsections (2) through (8) of section
 220 932.7055, Florida Statutes, are renumbered as subsections (3)
 221 through (9), respectively, and a new subsection (2) is added to
 222 said section, to read:

223 932.7055 Disposition of liens and forfeited property.--
 224 (2) Notwithstanding subsection (1), a seizing agency must
 225 destroy any image and the medium on which the image is recorded,
 226 including, but not limited to, a photograph, videotape,
 227 diskette, compact disc, or fixed disk made in violation of s.
 228 810.145, when the image and the medium on which it is recorded
 229 is no longer needed for an official purpose. The agency may not
 230 sell or retain any image.

231 Section 5. Section 932.707, Florida Statutes, is amended
 232 to read:

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

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243 Department of Law Enforcement shall submit any substantial
244 noncompliance to the Office of the Chief Financial Officer,
245 which shall be responsible for the enforcement of this section.

246 Section 6. For the purpose of incorporating the amendment
247 to section 932.701, Florida Statutes, in a reference thereto,
248 subsection (6) of section 705.101, Florida Statutes, is
249 reenacted to read:

250 705.101 Definitions.--As used in this chapter:

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

259 Section 7. For the purpose of incorporating the amendment
260 to section 932.701, Florida Statutes, in references thereto,
261 subsection (4) of section 932.703, Florida Statutes, is
262 reenacted to read:

263 932.703 Forfeiture of contraband article; exceptions.--

264 (4) In any incident in which possession of any contraband
265 article defined in s. 932.701(2)(a) constitutes a felony, the
266 vessel, motor vehicle, aircraft, other personal property, or
267 real property in or on which such contraband article is located
268 at the time of seizure shall be contraband subject to
269 forfeiture. It shall be presumed in the manner provided in s.
270 90.302(2) that the vessel, motor vehicle, aircraft, other

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271 | personal property, or real property in which or on which such
272 | contraband article is located at the time of seizure is being
273 | used or was attempted or intended to be used in a manner to
274 | facilitate the transportation, carriage, conveyance,
275 | concealment, receipt, possession, purchase, sale, barter,
276 | exchange, or giving away of a contraband article defined in s.
277 | 932.701(2).

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