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## Civil Rights & Judiciary Committee

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### HB 1270

**Brief Description:** Concerning nonconsensual capture of private, personal, and familial activities by trespassers.

**Sponsors:** Representatives Shea and McCaslin.

#### Brief Summary of Bill

- Creates and defines a statutory civil cause of action making it unlawful for a person to intrude onto the land or airspace above the land of another through trespass or the use of any device.
- Requires that the entry or invasion must be made in order to capture any type of visual image or other physical impression of the plaintiff engaging in a private, personal, or familial activity and that the invasion occurs in a manner that is offensive to a reasonable person.

**Hearing Date:** 2/12/19

**Staff:** Ingrid Lewis (786-7289).

#### Background:

A tort action is a civil legal action to recover damages for personal injuries or property damage resulting from a wrongful, intentional, or negligent act. The boundaries of tort law are defined by common law and state statutory law.

Washington generally recognizes the existence of a common law right of privacy, and individuals may bring a cause of action for invasion of that right in four situations: intrusion into seclusion; appropriation of name, personality, or likeness; public disclosure of private facts; and placing another in a false light.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:**

A new statutory civil cause of action for the tort of invasion of privacy is created. A plaintiff can bring an invasion of privacy claim for injuries caused by the defendant for either: a knowing intrusion onto the land or into the airspace above the land of another person without consent to capture a visual image or impression of the person; or the attempted capture of a visual image or impression of a person through the use of any device, regardless of physical trespass.

In order to be actionable, the plaintiff must have been engaged in private, personal, or familial activity, and the defendant's interference must be of a kind that would be offensive to a reasonable person.

Law enforcement personnel or employees of governmental agencies who attempt to capture a visual image or other physical impression of persons engaging or alleged to be engaged in illegal activities or misconduct are not impaired or limited in otherwise lawful activities as long as the actions are within the scope of their employment and consistent with state and federal law.

A person who commits either physical or constructive invasion of privacy is liable for up to three times the amount of any general and special damages that are proximately caused by the violation, as well as reasonable attorney's fees and costs. In addition, civil fines of not less than \$5,000 and not more than \$50,000 may be imposed. If the plaintiff proves that the invasion of privacy resulted in financial compensation, a court may order that any moneys be forfeited to the plaintiff.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.