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**HOUSE BILL 2477**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives McDonald and Smith

AN ACT Relating to providing citizens with a civil process to stop nonconsensual capture of their private, personal, and familial activities by trespassers; adding a new section to chapter 4.24 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 4.24 RCW to read as follows:

(1) A person is liable for physical invasion of privacy when the person knowingly enters onto the land or into the airspace above the land of another person without permission or otherwise commits a trespass for the purpose of capturing any type of visual image or other physical impression of the person engaging in a private, personal, or familial activity, and the invasion occurs in a manner that is offensive to a reasonable person.

(2) A person is liable for constructive invasion of privacy when the person, through the use of any device and regardless of whether there is a physical trespass, attempts to capture any type of visual image or other physical impression of the person engaging in a private, personal, or familial activity, if the image or other physical impression could not have been achieved without a physical trespass absent the use of the device and the invasion occurs in a manner that is offensive to a reasonable person.

(3) This section does not impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies, who, in the course and scope of their employment and consistent with the state and federal Constitutions, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity or other misconduct, the suspected violation of any administrative rule or regulation, suspected fraudulent conduct, or any activity involving a violation of law or business practices or conduct of public officials adversely affecting the public welfare, health, or safety.

(4) For purposes of this section:

(a) "Private, personal, or familial activity" includes, but is not limited to:

(i) Intimate details of the plaintiff's personal life under circumstances in which the plaintiff has a reasonable expectation of privacy;

(ii) Interaction with the plaintiff's family or significant others under circumstances in which the plaintiff has a reasonable expectation of privacy; and

(iii) Any activity that occurs on a residential property under circumstances in which the plaintiff has a reasonable expectation of privacy.

(b) "Private, personal, or familial activity" does not include illegal or otherwise criminal activity.

(5)(a) A person who commits any act described in subsection (1) or (2) of this section is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section, or liquidated damages of five hundred dollars per instance, together with costs and reasonable attorneys' fees for the prevailing party. 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.

(b) In addition to the liability imposed by (a) of this subsection, a person who commits any act described in subsection (1) or (2) of this section is subject to a civil fine of not less than five thousand dollars and not more than fifty thousand dollars.

(6) In any action pursuant to this section, the court may grant equitable relief including, but not limited to, an injunction and a restraining order against future violations of subsection (1) or (2) of this section.

(7) It is not a defense to a violation of this section that no image or physical impression was captured or sold.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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