

Assembly Bill No. 381

CHAPTER 424

An act to amend Section 1708.8 of the Civil Code, relating to legal obligations.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 381, Montanez. Legal obligations: liability.

Existing law establishes liability for various types of physical and constructive invasions of privacy, including, among other things, when a defendant knowingly enters onto the land of another without permission or otherwise committed a trespass with the intent to capture any physical type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity, and the invasion is offensive to a reasonable person, as specified. Existing law provides that a person who commits physical or constructive invasion of privacy is liable for up to 3 times the amount of general and special damages proximately caused by that violation and may also be liable for punitive damages and, if proven to be committed for a commercial purpose, subject to disgorgement to the plaintiff of any proceeds or consideration obtained as a result of that violation.

This bill would provide that an assault committed with the intent to capture any type of visual image, sound recording, or physical impression of the plaintiff subjects a person to provisions of law authorizing liability for up to 3 times the amount of general and special damages proximately caused by that violation, punitive damages, and disgorgement to the plaintiff of any proceeds or other consideration as a result of the violation. The bill would also provide that a person who directs, solicits, actually induces, or actually causes another person to commit an assault of this nature is liable for other specified damages.

The people of the State of California do enact as follows:

SECTION 1. Section 1708.8 of the Civil Code is amended to read:

1708.8. (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise committed a trespass in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

(c) An assault committed with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is subject to subdivisions (d), (e), and (h).

(d) A person who commits any act described in subdivision (a), (b), or (c) 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. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section.

(e) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate any provision of subdivision (a), (b), or (c) is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, instigates, induces, or otherwise causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section 3294.

(f) Sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described in this section shall not itself constitute a violation of this section, nor shall this section be construed to limit all other rights or remedies of plaintiff in law or equity, including, but not limited to, the publication of private facts.

(g) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, 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, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law or pattern of business practices adversely affecting the public health or safety.

(h) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a) or (b).

(i) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

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

(k) For the purposes of this section, “for a commercial purpose” means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(l) For the purposes of this section, “personal and familial activity” includes, but is not limited to, intimate details of the plaintiff’s personal life, interactions with the plaintiff’s family or significant others, or other aspects of plaintiff’s private affairs or concerns. Personal and familial activity does not include illegal or otherwise criminal activity as delineated in subdivision (f). However, “personal and familial activity” shall include the activities of victims of crime in circumstances where either subdivision (a) or (b), or both, would apply.

(m) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.