AMENDED IN ASSEMBLY JANUARY 15, 2014

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL No. 1256

Introduced by Assembly Member Bloom

February 22, 2013

An act to amend Section 1708.8 of, and to add Section 1708.9 to, the Civil Code, relating to civil law.

LEGISLATIVE COUNSEL'S DIGEST

AB 1256, as amended, Bloom. Civil law: privacy: entry and exit of facilities.

Existing law provides that a person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise commits 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.

This bill would recast these provisions to instead provide that a person is liable for a physical invasion of privacy when the defendant knowingly enters onto the land of another person without permission or otherwise commits a trespass with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the invasion occurs in a manner that is offensive to a reasonable person.

The bill would define "private, personal, or familial activity," as specified, and provide that this definition applies to physical and constructive invasion of privacy.

Existing law provides that it is a crime punishable by a fine not exceeding $500, by imprisonment in a county jail for a period of not more than 6 months, or by both that fine and imprisonment, or by a greater fine and a longer period of imprisonment if the defendant has been previously convicted of a specified violation of law, to come into any school building or upon any school grounds, without lawful business thereon, if the defendant's presence or act interferes with the peaceful conduct of the activities of the school or disrupts the school or its pupils or school activities and the defendant remains there after being asked to leave, reenters or comes upon that place within 7 days of being asked to leave, has otherwise established a continued pattern of unauthorized entry, or willfully or knowingly creates a disruption with the intent to threaten the immediate physical safety of any pupil in preschool, kindergarten, or any of grades 1 to 8, inclusive, arriving at, attending, or leaving from school, as specified.

This bill would provide that it is unlawful for any person, except a parent or guardian acting toward his or her minor child, to, by force, threat of force, or physical obstruction that is a crime of violence, intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with any person attempting to enter or exit a facility, or to, by nonviolent physical obstruction, intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with any person attempting to enter or exit a facility. The bill would define "facility" for purposes of these provisions as any public or private school grounds, any health facility, or any lodging, including a private residence, hotel, temporary lodging facility, inn, motel, bed and breakfast, or any other location that provides permanent or temporary lodging to persons. The bill would authorize a ~~facility~~ *person* aggrieved by a violation of these provisions to bring a civil action to enjoin the violation, for compensatory and punitive damages, for injunctive relief, and for the cost of suit and reasonable attorney's and expert witness' fees, or with respect to compensatory damages, to elect, in lieu of actual damages, an award of statutory damages, as specified. The bill would also authorize the Attorney General, a district attorney, or a city attorney to bring a civil action to enjoin a violation of these provisions, for compensatory damages to ~~facilities~~ *persons and entities* aggrieved by the violation, and for the imposition of a civil penalty, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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 capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a private, personal, or familial activity and the 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 private, personal, or familial activity, 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 or false imprisonment 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. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000).

(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, actually induces, or actually 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. A person who comes within the description of this subdivision is also subject to a civil fine of not less than five thousand dollars ($5,000) and not more than fifty thousand dollars ($50,000).

(f) (1) The transmission, publication, broadcast, sale, offer for sale, or other use of any visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c) shall not constitute a violation of this section unless the person, in the first transaction following the taking or capture of the visual image, sound recording, or other physical impression, publicly transmitted, published, broadcast, sold or offered for sale, the visual image, sound recording, or other physical impression with actual knowledge that it was taken or captured in violation of subdivision (a), (b), or (c), and provide compensation, consideration, or remuneration, monetary or otherwise, for the rights to the unlawfully obtained visual image, sound recording, or other physical impression.

(2) For the purposes of paragraph (1), "actual knowledge" means actual awareness, understanding, and recognition, obtained prior to the time at which the person purchased or acquired the visual image, sound recording, or other physical impression, that the visual image, sound recording, or other physical impression was taken or captured in violation of subdivision (a), (b), or (c). The plaintiff shall establish actual knowledge by clear and convincing evidence.

(3) Any person that publicly transmits, publishes, broadcasts, sells, or offers for sale, in any form, medium, format, or work, a visual image, sound recording, or other physical impression that was previously publicly transmitted, published, broadcast, sold,

or offered for sale, by another person, is exempt from liability under this section.

(4) If a person's first public transmission, publication, broadcast, or sale or offer for sale, of a visual image, sound recording, or other physical impression that was taken or captured in violation of subdivision (a), (b), or (c), does not constitute a violation of this section, that person's subsequent public transmission, publication, broadcast, sale, or offer for sale, in any form, medium, format, or work, of the visual image, sound recording, or other physical impression, does not constitute a violation of this section.

(5) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in California in violation of subdivision (a), (b), or (c) after January 1, 2010, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of California.

(6) Nothing in this subdivision shall be construed to impair or limit a special motion to strike pursuant to Section 425.16, 425.17, or 425.18 of the Code of Civil Procedure.

(7) This section shall not be construed to limit all other rights or remedies of the 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 or other misconduct, the suspected violation of any administrative rule or regulation, a 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.

(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), (b), or (c).

(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*) (1) For the purposes of this section, "private, personal, and familial activity" includes, but is not limited to:

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

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

(C) If and only after the defendant has been convicted of violating Section 626.8 of the Penal Code, any activity that occurs when minors are present at any location set forth in subdivision (a) of Section 626.8 of the Penal Code.

(D) Any activity that occurs on a residential property under circumstances in which the plaintiff has a reasonable expectation of privacy, including, but not limited to, a private residence, temporary familial lodging, hotel, motel, inn, and bed and breakfast.

(E) Other aspects of the plaintiff's private affairs or concerns under circumstances in which the ~~plaintiff has a reasonable expectation of privacy, or other activities or locations in which a~~plaintiff has a reasonable expectation of privacy.

(2) "Private, personal, and familial activity" does not include illegal or otherwise criminal activity as delineated in subdivision (g). However, "private, personal, and familial activity" shall include the activities of victims of crime in circumstances under which subdivision (a), (b), or (c) would apply.

(m) (1) A proceeding to recover the civil fines specified in subdivision (d) or (e) may be brought in any court of competent jurisdiction by a county counsel or city attorney.

(2) Fines collected pursuant to this subdivision shall be allocated, as follows:

(A) One-half shall be allocated to the prosecuting agency.

(B) One-half shall be deposited in the Arts and Entertainment Fund, which is hereby created in the State Treasury.

(3) Funds in the Arts and Entertainment Fund created pursuant to paragraph (2) may be expended by the California Arts Council, upon appropriation by the Legislature, to issue grants pursuant to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter 9 (commencing with Section 8750) of Division 1 of Title 2 of the Government Code).

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

(n) 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.

SEC. 2. Section 1708.9 is added to the Civil Code, to read:

1708.9. (a) It is unlawful for any person, except a parent or guardian acting toward his or her minor child, to commit any of the following acts:

(1) By force, threat of force, or physical obstruction that is a crime of violence, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(2) By nonviolent physical obstruction, to intentionally injure, intimidate, interfere with, or attempt to injure, intimidate, or interfere with, any person attempting to enter or exit a facility.

(b) For purposes of this section:

(1) “Facility” means any public or private school grounds, as described in subdivision (a) of Section 626.8 of the Penal Code, any health facility, as described in Section 1250 of the Health and Safety Code, or any lodging, including a private residence, hotel, temporary lodging facility, inn, motel, bed and breakfast, or any other location that provides permanent or temporary lodging to persons.

(2) To “interfere” means to restrict a person’s freedom of movement.

(3) To "intimidate" means to place a person in reasonable apprehension of bodily harm to himself, herself, or another person.

(4) "Nonviolent" means conduct that would not constitute a crime of violence.

(5) "Physical obstruction" means rendering ingress to or egress from a facility impassable to another person, or rendering passage to or from a facility unreasonably difficult or hazardous to another person.

(c) A ~~facility, on its own behalf, or an authorized representative or owner of a facility,~~ *person* aggrieved by a violation of subdivision (a) may bring a civil action to enjoin the violation, for compensatory and punitive damages, for injunctive relief, and for the cost of suit and reasonable attorney's and expert witness' fees. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of five thousand dollars ($5,000) per violation of paragraph (1) of subdivision (a), and one thousand dollars ($1,000) per violation of paragraph (2) of subdivision (a).

(d) The Attorney General, a district attorney, or a city attorney may bring a civil action to enjoin a violation of subdivision (a), for compensatory damages to ~~facilities~~ *persons or entities* aggrieved by the violation, and for the imposition of a civil penalty against each respondent. The civil penalty for a violation of paragraph (1) of subdivision (a) shall not exceed fifteen thousand dollars ($15,000), or twenty-five thousand dollars ($25,000) for a second or subsequent violation. The civil penalty for a violation of paragraph (2) of subdivision (a) shall not exceed five thousand dollars ($5,000), or twenty-five thousand dollars ($25,000) for a second or subsequent violation.

(e) This section shall not be construed to impair the right to engage in any constitutionally protected activity, including, but not limited to, speech, protest, or assembly.

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(f) The adoption of the act that added this section is an exercise of the police power of the state for purposes of protecting the health, safety, and welfare of the people of California, and this section shall be liberally construed to effectuate that purpose.

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