

AMENDED IN ASSEMBLY MAY 19, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 524

**Introduced by Assembly Member Bass
(Principal coauthor: Assembly Member Davis)**

February 25, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 524, as amended, Bass. Privacy.

Existing law provides that 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, or knowingly trespasses or commits assault with the intent to capture, as specified, 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, as specified. The person who commits the act is liable for up to 3 times the amount of general and special damages, and may be liable for punitive damages. However, the sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described does not itself constitute a violation of that provision.

This bill would create an exception to the latter provision regarding the sale, transmission, publication, broadcast, or use of an image or recording if the person sold, transmitted, published, broadcast, or used any image or recording of the type described in the provision described

above with actual knowledge the images or recordings were obtained illegally *and provided compensation, consideration, or remuneration, monetary or otherwise, for the use of, or rights to, the unlawfully obtained images or recordings.* The bill would also make technical changes.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) Individuals and their families have been harassed and
4 endangered by being persistently followed or chased in a manner
5 that puts them in reasonable fear of bodily injury, and in danger
6 of serious bodily injury or even death, by photographers,
7 videographers, and audio recorders attempting to capture images
8 or other reproductions of their private lives for commercial
9 purposes.
- 10 (b) The legitimate privacy interests of individuals and their
11 families have been violated by photographers, videographers, and
12 audio recorders who physically trespass in order to capture images
13 or other reproductions of their private lives for commercial
14 purposes, or who do so constructively through intrusive modern
15 visual or auditory enhancement devices, such as powerful telephoto
16 lenses and hyperbolic microphones that enable invasion of private
17 areas that would otherwise be impossible without trespassing.
- 18 (c) Such harassment and trespass threaten not only professional
19 public persons and their families, but also private persons and
20 families for whom personal tragedies or circumstances beyond
21 their control create media interest.
- 22 (d) There is no right, under the United States Constitution or
23 the California Constitution, to persistently follow or chase another
24 in a manner that creates a reasonable fear of bodily injury, to
25 trespass, or to constructively trespass through the use of intrusive
26 visual or auditory enhancement devices.
- 27 (e) The right to privacy and respect for private lives of
28 individuals and their families must be balanced against the right
29 of the media to gather and report the news. The right of a free press

1 to report details of an individual's private life must be weighed
2 against the rights of the individual to enjoy liberty and privacy.

3 SEC. 2. Section 1708.8 of the Civil Code is amended to read:

4 1708.8. (a) A person is liable for physical invasion of privacy
5 when the defendant knowingly enters onto the land of another
6 person without permission or otherwise committed a trespass in
7 order to physically invade the privacy of the plaintiff with the
8 intent to capture any type of visual image, sound recording, or
9 other physical impression of the plaintiff engaging in a personal
10 or familial activity and the physical invasion occurs in a manner
11 that is offensive to a reasonable person.

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

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

25 (d) A person who commits any act described in subdivision (a),
26 (b), or (c) is liable for up to three times the amount of any general
27 and special damages that are proximately caused by the violation
28 of this section. This person may also be liable for punitive damages,
29 subject to proof according to Section 3294. If the plaintiff proves
30 that the invasion of privacy was committed for a commercial
31 purpose, the defendant shall also be subject to disgorgement to the
32 plaintiff of any proceeds or other consideration obtained as a result
33 of the violation of this section.

34 (e) A person who directs, solicits, actually induces, or actually
35 causes another person, regardless of whether there is an
36 employer-employee relationship, to violate any provision of
37 subdivision (a), (b), or (c) is liable for any general, special, and
38 consequential damages resulting from each said violation. In
39 addition, the person that directs, solicits, instigates, induces, or
40 otherwise causes another person, regardless of whether there is an

1 employer-employee relationship, to violate this section shall be
2 liable for punitive damages to the extent that an employer would
3 be subject to punitive damages pursuant to subdivision (b) of
4 Section 3294.

5 (f) Sale, transmission, publication, broadcast, or use of any
6 image or recording of the type, or under the circumstances,
7 described in this section shall not itself constitute a violation of
8 this section, unless the person sold, transmitted, published,
9 broadcast, or used any image or recording of the type described
10 in this section with actual knowledge the images or recordings
11 were obtained illegally *and provided compensation, consideration,*
12 *or remuneration, monetary or otherwise, for the use of, or rights*
13 *to, the unlawfully obtained images or recordings.* This section
14 shall not be construed to limit all other rights or remedies of
15 plaintiff in law or equity, including, but not limited to, the
16 publication of private facts.

17 (g) This section shall not be construed to impair or limit any
18 otherwise lawful activities of law enforcement personnel or
19 employees of governmental agencies or other entities, either public
20 or private who, in the course and scope of their employment, and
21 supported by an articulable suspicion, attempt to capture any type
22 of visual image, sound recording, or other physical impression of
23 a person during an investigation, surveillance, or monitoring of
24 any conduct to obtain evidence of suspected illegal activity, the
25 suspected violation of any administrative rule or regulation, a
26 suspected fraudulent insurance claim, or any other suspected
27 fraudulent conduct or activity involving a violation of law or
28 pattern of business practices adversely affecting the public health
29 or safety.

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

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

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

39 (k) For the purposes of this section, “for a commercial purpose”
40 means any act done with the expectation of a sale, financial gain,

1 or other consideration. A visual image, sound recording, or other
2 physical impression shall not be found to have been, or intended
3 to have been captured for a commercial purpose unless it is
4 intended to be, or was in fact, sold, published, or transmitted.

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

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