

AMENDED IN SENATE JUNE 29, 2009

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.

The bill would provide that a person who violates the provisions described above, or who directs, solicits, actually induces, or actually causes another person to violate any of those provisions would be subject to a civil fine of not less than \$5,000 and not more than \$50,000.

The bill would authorize a county counsel or a city attorney to bring a civil action in the name of the people whenever that attorney has reasonable cause to believe that a violation of these provisions has occurred. The bill would specify the allocation of the fines collected pursuant to the foregoing provision, including $\frac{1}{3}$ to the prosecuting agency and $\frac{1}{3}$ to the victim or the victim's designated recipient. The bill would also establish the Arts and Entertainment Fund in the State Treasury for the deposit of $\frac{1}{3}$ of the fines, for expenditure by the California Arts Council, upon appropriation by the Legislature, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
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

1 lenses and hyperbolic microphones that enable invasion of private
2 areas that would otherwise be impossible without trespassing.

3 (c) Such harassment and trespass threaten not only professional
4 public persons and their families, but also private persons and
5 families for whom personal tragedies or circumstances beyond
6 their control create media interest.

7 (d) There is no right, under the United States Constitution or
8 the California Constitution, to persistently follow or chase another
9 in a manner that creates a reasonable fear of bodily injury, to
10 trespass, or to constructively trespass through the use of intrusive
11 visual or auditory enhancement devices.

12 (e) The right to privacy and respect for private lives of
13 individuals and their families must be balanced against the right
14 of the media to gather and report the news. The right of a free press
15 to report details of an individual's private life must be weighed
16 against the rights of the individual to enjoy liberty and privacy.

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

18 1708.8. (a) A person is liable for physical invasion of privacy
19 when the defendant knowingly enters onto the land of another
20 person without permission or otherwise committed a trespass in
21 order to physically invade the privacy of the plaintiff with the
22 intent to capture any type of visual image, sound recording, or
23 other physical impression of the plaintiff engaging in a personal
24 or familial activity and the physical invasion occurs in a manner
25 that is offensive to a reasonable person.

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

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

39 (d) A person who commits any act described in subdivision (a),
40 (b), or (c) is liable for up to three times the amount of any general

1 and special damages that are proximately caused by the violation
2 of this section. This person may also be liable for punitive damages,
3 subject to proof according to Section 3294. If the plaintiff proves
4 that the invasion of privacy was committed for a commercial
5 purpose, the defendant shall also be subject to disgorgement to the
6 plaintiff of any proceeds or other consideration obtained as a result
7 of the violation of this section. *A person who comes within the*
8 *description of this subdivision is also subject to a civil fine of not*
9 *less than five thousand dollars (\$5,000) and not more than fifty*
10 *thousand dollars (\$50,000).*

11 (e) A person who directs, solicits, actually induces, or actually
12 causes another person, regardless of whether there is an
13 employer-employee relationship, to violate any provision of
14 subdivision (a), (b), or (c) is liable for any general, special, and
15 consequential damages resulting from each said violation. In
16 addition, the person that directs, solicits, instigates, induces, or
17 otherwise causes another person, regardless of whether there is an
18 employer-employee relationship, to violate this section shall be
19 liable for punitive damages to the extent that an employer would
20 be subject to punitive damages pursuant to subdivision (b) of
21 Section 3294. *A person who comes within the description of this*
22 *subdivision is also subject to a civil fine of not less than five*
23 *thousand dollars (\$5,000) and not more than fifty thousand dollars*
24 *(\$50,000).*

25 (f) Sale, transmission, publication, broadcast, or use of any
26 image or recording of the type, or under the circumstances,
27 described in this section shall not itself constitute a violation of
28 this section, unless the person sold, transmitted, published,
29 broadcast, or used any image or recording of the type described
30 in this section with actual knowledge the images or recordings
31 were obtained illegally and provided compensation, consideration,
32 or remuneration, monetary or otherwise, for the use of, or rights
33 to, the unlawfully obtained images or recordings. This section shall
34 not be construed to limit all other rights or remedies of plaintiff in
35 law or equity, including, but not limited to, the publication of
36 private facts.

37 (g) This section shall not be construed to impair or limit any
38 otherwise lawful activities of law enforcement personnel or
39 employees of governmental agencies or other entities, either public
40 or private who, in the course and scope of their employment, and

1 supported by an articulable suspicion, attempt to capture any type
2 of visual image, sound recording, or other physical impression of
3 a person during an investigation, surveillance, or monitoring of
4 any conduct to obtain evidence of suspected illegal activity, the
5 suspected violation of any administrative rule or regulation, a
6 suspected fraudulent insurance claim, or any other suspected
7 fraudulent conduct or activity involving a violation of law or
8 pattern of business practices adversely affecting the public health
9 or safety.

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

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

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

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

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

34 (m) (1) *A county counsel or city attorney may bring a civil*
35 *action in the name of the people to obtain any or all appropriate*
36 *relief, whenever the county counsel or city attorney has reasonable*
37 *cause to believe that a violation of this section has occurred.*

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

40 (A) *One-third shall be allocated to the prosecuting agency.*

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

3 (C) One-third shall be allocated to the victim or the victim's
4 designated recipient. The designated recipient may be the
5 prosecuting agency, the Arts and Entertainment Fund, or a
6 nonprofit, tax-exempt charitable organization qualified under
7 Section 501(c)(3) of the Internal Revenue Code.

8 (3) Funds in the Arts and Entertainment Fund created pursuant
9 to paragraph (2) may be expended by the California Arts Council,
10 upon appropriation by the Legislature, to issue grants pursuant
11 to the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
12 9 (commencing with Section 8750) of Division 1 of Title 2 of the
13 Government Code).

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

17 ~~(m)~~

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