

Appendix A. House Bill 1855 by R. Williams (Senate Bill 1840 by Norris)

SENATE BILL 1840
By Norris

HOUSE BILL 1855

By Williams R

AN ACT to amend Tennessee Code Annotated, Title 20;
Title 29; Title 39; Title 40 and Title 66, relative to
privacy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following language as a new chapter:

29-40-101.

As used in this chapter:

(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 § 29-40-102(a);

(2) "For a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration; and

(3) "Personal and familial activity" includes intimate details of the plaintiff's personal life, interactions with the plaintiff's family or significant others, other aspects of the plaintiff's private affairs or concerns, or the activities of victims of crime in circumstances under which § 29-40-102(a) would apply.

"Personal and familial activity" does not include any misconduct described in § 29-40-103.

29-40-102.

(a) A civil cause of action may be brought against any person who:

(1) Knowingly enters onto the land of another 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;

(2) Captures or 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; provided, that 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;

(3) Commits an assault or false imprisonment for the purpose of, and with the intent to, capture any type of visual image, sound recording, or other physical impression of the plaintiff; or

(4) Directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate this section.

(b)

(1) A defendant who violates this section shall be liable for the following damages proximately caused by the violation:

(A) General damages;

(B) Special damages; and

(C) Punitive damages up to three (3) times the amount of general and special damages combined.

(2) If the plaintiff proves that the violation of this section was committed for a commercial purpose, then the defendant shall be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section; provided, however, 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.

(c)

(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 subsection (a) 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:

(A) 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 subsection (a), which the plaintiff shall establish by clear and convincing evidence; and

(B) Provided compensation, consideration, or remuneration, monetary or otherwise, for the rights to the visual image, sound recording, or other physical impression.

(2) 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.

(3) 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 subsection (a) does not constitute a violation of this section, then 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.

(4) This section applies only to a visual image, sound recording, or other physical impression that is captured or taken in this state in violation of subsection (a) on or after July 1, 2014, and shall not apply to any visual image, sound recording, or other physical impression taken or captured outside of this state.

(d) In any action pursuant to this section, the court may grant equitable relief, including an injunction and restraining order against further violations of this section.

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

29-40-103. This chapter shall not impair or limit any otherwise lawful activities of law enforcement personnel or employees of public or private entities, who, in the course and scope of their employment, and supported by reasonable suspicion, attempt to capture or 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, 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.

29-40-104. This chapter shall not limit all other rights or remedies of the plaintiff in law or equity. The rights and remedies provided in this chapter are cumulative and in addition to any other rights and remedies provided by law.

SECTION 2. This act shall not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2014, the public welfare requiring it.