

STORAGE NAME: h2189z.cp
DATE: June 14, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
FINAL ANALYSIS**

BILL #: HB 2189 (Passed as CS/SB 1706; Chapter 99-262, Laws of Florida)

RELATING TO: Retailers/Customer Privacy/Videos

SPONSOR(S): Rep. Diaz de la Portilla

COMPANION BILL(S): CS/SB 1706

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME AND PUNISHMENT YEAS 6 NAYS 0

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I. FINAL ACTION STATUS:

HB 2189 passed as CS/SB 1706, was approved by the Governor on June 8, 1999 and became Chapter 99-262, Laws of Florida.

II. SUMMARY:

HB 2189 makes it a first degree misdemeanor for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers who are using the retail sales establishment's dressing room, fitting room, changing room or rest room when such room provides a reasonable expectation of privacy.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1998, the legislature passed CS/HB 3709 which created section 810.14, F.S. The pertinent part of the statute provides:

(1) A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes, photographs, films, videotapes, or records another person when such other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

(2) A person who violates this section commits a misdemeanor of the first degree for the first violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Currently, it is not a crime in Florida to secretly observe or videotape another person in a private setting unless the observing or videotaping is done with a lewd, lascivious or indecent intent.

B. EFFECT OF PROPOSED CHANGES:

The bill prohibits any merchant from directly observing or making use of video cameras or other visual surveillance devices to observe or record customers who are using the retail sales establishment's dressing room, fitting room, changing room or rest room when such room provides a reasonable expectation of privacy.

The bill defines "merchant" as an owner or operator, or the agent, consignee, employee, lessee or officer of an owner of any premises or apparatus used for retail purchase or sale of any merchandise.

The bill provides that any merchant who violates this section is guilty of a first degree misdemeanor punishable by up to a \$1,000 fine or a year in jail.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill prohibits a store from observing a customer in their dressing room.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates an unnumbered section of statute.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that it is a first degree misdemeanor for a retail sales establishment to observe or use surveillance devices to observe or record customers who are in the store's dressing room or bathroom.

Section 2: Provides effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

4. Total Revenues and Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments.

2. Recurring Effects:

See fiscal comments.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See fiscal comments.

2. Direct Private Sector Benefits:

See fiscal comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See fiscal comments.

D. FISCAL COMMENTS:

The bill will not have a fiscal impact on the Department of Corrections but may have a insignificant impact on county jails if people are jailed for a violation of the newly created statute.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

Committee Amendments

On April 15, 1999, the sponsor offered a strike everything amendment at the meeting of the Committee on Crime & Punishment to conform this bill to the Senate companion. The strike everything amendment was passed by the committee and changed the original bill in the following manner:

- C The original bill provided that it was unlawful for any "retail sales establishment or any person employed by, or acting as an agent or on behalf of any person or entity contracting with, such an establishment" to directly observe or record customers who are using the establishment's dressing room, fitting room, changing room or rest room. The strike everything amendment changed the phrase "retail sales establishment" to "merchant" and provided a definition of the term "merchant"
- C The strike everything amendment provided that the merchant was not permitted to observe or record customers who are using the retail sales establishment's dressing room, fitting room, changing fitting room, changing room, or rest room when such room provides a reasonable expectation of privacy. Thus, in order to be a criminal violation, a merchant must observe or videotape the customer in an area where the customer has a reasonable expectation of privacy. The test for determining whether a person has a reasonable expectation of privacy in a particular location is whether the individual has manifested a subjective expectation of privacy in the object of the challenged search and if so, whether society is prepared to recognize that expectation as reasonable. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507 (1967). As a result, a merchant would likely be permitted to observe or videotape the common area outside of a dressing room or the inside of a dressing room on which there is not a door or curtain.

Senate Amendment

On the floor of the Senate, Senator Meeks offered an amendment to CS/SB 1706 which inserted the word "visual" to describe the type of surveillance devices which merchants are prohibited from using. The Senate committee substitute, as amended was adopted by the Senate and House of Representatives.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Trina Kramer

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

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