
A BILL FOR AN ACT

RELATING TO TORT ACTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 663, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§663- Physical or constructive invasion of privacy;
5 civil cause of action. (a) A person is liable for physical
6 invasion of privacy when the defendant knowingly enters onto
7 land owned or leased by the plaintiff without permission in
8 order to physically invade the privacy of the plaintiff with the
9 intent to capture any type of visual image, sound recording, or
10 other physical impression of the plaintiff engaging in a
11 personal or familial activity and the physical invasion occurs
12 in a manner that is offensive to a reasonable person.
13 (b) A person is liable for constructive invasion of
14 privacy when the defendant attempts to capture, in a manner that
15 is offensive to a reasonable person, any type of visual image,
16 sound recording, or other physical impression of the plaintiff
17 engaging in a personal or familial activity on land owned or
18 leased by the plaintiff and under circumstances in which the



1 plaintiff had a reasonable expectation of privacy, through the
2 use of a visual or auditory enhancing device, regardless of
3 whether there is a physical trespass, if this image, sound
4 recording, or other physical impression could not have been
5 achieved without a trespass unless the visual or auditory
6 enhancing device was used.

7 (c) An assault or false imprisonment committed with the
8 intent to capture any type of visual image, sound recording, or
9 other physical impression of the plaintiff shall be subject to
10 subsections (d), (e), and (i).

11 (d) A person who commits any act under subsection (a),
12 (b), or (c) shall be liable for up to three times the amount of
13 any general and special damages that are proximately caused by
14 the violation of this section and may be liable for punitive
15 damages. If the plaintiff proves that the invasion of privacy
16 was committed for a commercial purpose, the defendant shall also
17 be subject to disgorgement to the plaintiff of any proceeds or
18 other consideration obtained as a result of the violation of
19 this section.

20 (e) A person who directs, solicits, actually induces, or
21 actually causes another person, regardless of whether there is
22 an employer-employee relationship, to violate subsection (a),



1 (b), or (c) shall be liable for any general, special, and
2 consequential damages resulting from each violation. Any person
3 who directs, solicits, actually induces, or actually causes
4 another person, regardless of whether there is an employer-
5 employee relationship, to violate this section shall be liable
6 for punitive damages to the extent that an employer would be
7 subject to punitive damages.

8 (f) The following circumstances shall not be a violation
9 of this section:

10 (1) The transmission, publication, broadcast, sale, offer
11 for sale, or other use of any visual image, sound
12 recording, or other physical impression that was taken
13 or captured in violation of subsection (a), (b), or
14 (c), unless the person, in the first transaction
15 following the taking or capture of the visual image,
16 sound recording, or other physical impression,
17 publicly transmitted, published, broadcast, sold or
18 offered for sale, the visual image, sound recording,
19 or other physical impression with actual knowledge
20 that it was taken or captured in violation of
21 subsection (a), (b), or (c), and provide compensation,
22 consideration, or remuneration, monetary or otherwise,



1 for the rights to the unlawfully obtained visual
2 image, sound recording, or other physical impression;
3 provided that "actual knowledge" means actual
4 awareness, understanding, and recognition, obtained
5 prior to the time at which the person purchased or
6 acquired the visual image, sound recording, or other
7 physical impression, that the visual image, sound
8 recording, or other physical impression was taken or
9 captured in violation of subsection (a), (b), or (c).

10 The plaintiff shall establish actual knowledge by
11 clear and convincing evidence;

12 (2) Any person who publicly transmits, publishes,
13 broadcasts, sells or offers for sale, in any form,
14 medium, format, or work, a visual image, sound
15 recording, or other physical impression that was
16 previously publicly transmitted, published, broadcast,
17 sold or offered for sale, by another person; and

18 (3) Any person's subsequent public transmission,
19 publication, broadcast, sale or offer for sale, in any
20 form, medium, format, or work, of the visual image,
21 sound recording, or other physical impression if that
22 person's first public transmission, publication,



1 broadcast, or sale or offer for sale of a visual
2 image, sound recording, or other physical impression
3 that was taken or captured did not violate subsection
4 (a), (b), or (c).

5 (g) This section shall apply only to a visual image, sound
6 recording, or other physical impression that is captured or
7 taken in this State in violation of subsection (a), (b), or (c)
8 after the effective date of this Act and shall not apply to any
9 visual image, sound recording, or other physical impression
10 taken or captured outside this State. Nothing in this section
11 shall be construed to:

- 12 (1) Impair or limit a special motion filed pursuant to
13 chapter 634F;
- 14 (2) Limit all other rights or remedies of the plaintiff in
15 law or equity, including but not limited to the
16 publication of private facts; and
- 17 (3) Impair or limit any otherwise lawful activities of law
18 enforcement personnel or employees of governmental
19 agencies or other entities, either public or private
20 who, in the course and scope of their employment, and
21 supported by an articulable suspicion, attempt to
22 capture any type of visual image, sound recording, or



1 other physical impression of a person during an
2 investigation, surveillance, or monitoring of any
3 conduct to obtain evidence of suspected illegal
4 activity or other misconduct, the suspected violation
5 of any administrative rule, a suspected fraudulent
6 conduct, or any activity involving a violation of law
7 or business practices or conduct of public officials
8 adversely affecting the public welfare, health, or
9 safety.

10 (h) Notwithstanding any law to the contrary, include rules
11 of court, upon the filing of any motion to dispose of a claim in
12 a judicial proceeding on the grounds that the claim is barred by
13 a defense based on the First Amendment of the United State
14 Constitution or article I of the Hawaii State Constitution:

15 (1) The motion shall be treated as a motion for judgment
16 on the pleadings, matters outside the pleadings shall
17 be excluded by the court, and the court shall expedite
18 the hearing of the motion;

19 (2) The moving party shall have a right:

20 (A) To an immediate appeal from a court order denying
21 the motion; and



- 1 (B) To file an application for a writ of mandamus if
- 2 the court fails to rule on the motion in an
- 3 expedited fashion;
- 4 (3) Discovery shall be suspended, pending decision on the
- 5 motion and appeals;
- 6 (4) The responding party shall:
- 7 (A) Without leave of court, have seven days to amend
- 8 its pleadings to be pled with specificity, and
- 9 shall include such supporting particulars as are
- 10 peculiarly within the supporting pleader's
- 11 knowledge; and
- 12 (B) Have the burden of proof and persuasion on the
- 13 motion;
- 14 (5) The court shall make its determination based upon the
- 15 allegations contained in the pleadings;
- 16 (6) The court shall grant the motion and dismiss the
- 17 judicial claim, unless the responding party has
- 18 demonstrated that more likely than not, the
- 19 respondent's claim is barred by a defense based on the
- 20 First Amendment of the United States Constitution or
- 21 article I of the Hawaii State Constitution;



1 (7) The court shall award a moving defendant who prevails
2 on the motion, without regard to any limits under
3 state law:

4 (A) Actual damages or \$5,000, whichever is greater;

5 (B) Costs of suit, including reasonable attorney's
6 and expert witness fees, incurred in connection
7 with the motion; and

8 (C) Any additional sanctions upon the plaintiff, its
9 attorney's fees, or law firms as the court
10 determines shall be sufficient to deter
11 repetition of the conduct and comparable conduct
12 by others similarly situated; and

13 (8) Any person damaged or injured by reason of a claim
14 filed in violation of their rights under this section
15 may seek relief in the form of a claim for actual or
16 compensatory damages as well as punitive damages,
17 attorney's fees, and costs from the person
18 responsible.

19 (i) In any action pursuant to this section, the court may
20 grant equitable relief, including but not limited to an
21 injunction and restraining order against further violations of
22 subsection (a), (b), or (c).



1 (j) The rights and remedies set forth in this section are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

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

7 (l) For purposes of this section:

8 "For a commercial purpose" means any act done with the
9 expectation of a sale, financial gain, or other consideration.

10 A visual image, sound recording, or other physical impression
11 shall not be found to have been, or intended to have been
12 captured for a commercial purpose unless it is intended to be,
13 or was in fact, sold, published, or transmitted.

14 "Personal and familial activity" includes intimate details
15 of the plaintiff's personal life, interactions with the
16 plaintiff's family or significant others, or other aspects of
17 the plaintiff's private affairs or concerns. "Personal and
18 familial activity" does not include illegal or otherwise
19 criminal activity as set forth under subsection (g)(3), but
20 includes the activities of victims of crime in circumstances
21 under which subsection (a), (b), or (c) applies.



1 (m) The rights and remedies provided in this section are
2 severable. If any provision of this section or its application
3 is held invalid, that invalidity shall not affect other
4 provisions or applications that can be given effect without the
5 invalid provision or application."

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 3. The revisor of statutes shall insert the
10 appropriate effective date of this Act in section 1 of this Act.

11 SECTION 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on July 1, 2050.

13



Report Title:

Tort Actions; Physical or Constructive Invasion of Privacy;
Civil Cause of Action

Description:

Creates a civil cause of action of physical or constructive invasion of privacy if the person obtains any type of visual image, sound recording, or other physical impression of another person under circumstances in which another person has a reasonable expectation of keeping private their personal life under certain conditions. Effective 07/01/50. (SD1)

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