

ACT 59

H.B. NO. 164

A Bill for an Act Relating to Unauthorized Motion Picture Recording.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Unauthorized operation of a recording device in a motion picture theater. (1) A person commits the offense of unauthorized operation of a recording device in a motion picture theater if the person knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited, without the consent of the motion picture theater owner.

(2) This section shall not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence-gathering employee or agent of the local, state, or federal government, from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, protective, law enforcement, or intelligence-gathering activities.

(3) Unauthorized operation of a recording device in a motion picture theater is a misdemeanor.

(4) For the purposes of this section:

“Audiovisual recording function” means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology.

“Motion picture theater” means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the offense.”

SECTION 2. Section 663-2, Hawaii Revised Statutes, is amended to read as follows:

“§663-2 Defense of lawful detention. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, or a motion picture theater for the purpose of investigation or questioning as to an unauthorized audiovisual recording of a motion picture, it shall be a defense to the

action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a police officer or by the owner of the retail mercantile establishment[;] or motion picture theater, the owner's authorized employee, or agent, and that such police officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny of merchandise or unauthorized audiovisual recording of a motion picture on the premises.

As used in this section[; ~~“reasonable grounds”~~]:

“Motion picture theater” means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the unauthorized audiovisual recording of a motion picture.

“Reasonable grounds” includes, but is not limited to, knowledge that a person has concealed possession of unpurchased merchandise of the retail mercantile establishment[; and a “reasonable time.”] or has made an unauthorized audiovisual recording of a motion picture taken at a motion picture theater.

“Retail mercantile establishment” means a place where goods, wares, or merchandise are offered to the public for sale.

“Reasonable time” means the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment or motion picture theater relative to the ownership of the merchandise[;

For the purpose of this section, the term “retail mercantile establishment” means a place where goods, wares, or merchandise are offered to the public for sale;] or making of an unauthorized audiovisual recording of a motion picture.

This section applies to legal actions resulting from detentions occurring after May 21, 1967[;], for retail merchant establishments, and after the effective date of this Act, for motion picture theaters.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved May 18, 2005.)

Note

1. Edited pursuant to HRS §23G-16.5.