

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 8
3 entitled “An act relating to voyeurism” respectfully reports that it has
4 considered the same and recommends that the bill be amended by striking out
5 all after the enacting clause and inserting in lieu thereof the following:

6 Sec. 1. 13 V.S.A. § 2605 is amended to read:

7 § 2605. VOYEURISM

8 (a) As used in this section:

9 (1) “Bona fide private investigator or bona fide security guard” means an
10 individual lawfully providing services, whether licensed or unlicensed,
11 pursuant to 26 V.S.A. §§ 3151 and 3151a.

12 (2) “Female breast” means any portion of the female breast below the top
13 of the areola.

14 (3) “Circumstances in which a person has a reasonable expectation of
15 privacy” means circumstances in which a reasonable person would believe that
16 his or her intimate areas would not be visible to the public, regardless of
17 whether that person is in a public or private area. This definition includes
18 circumstances in which a person knowingly disrobes in front of another, but
19 does not expect nor give consent for the other person to photograph, film, or
20 record his or her intimate areas.

1 (4) “Intimate areas” means the naked or undergarment-clad genitals,
2 pubic area, buttocks, or female breast of a person.

3 (5) “Place where a person has a reasonable expectation of privacy”
4 means:

5 (A) a place in which a reasonable person would believe that he or she
6 could disrobe in privacy, without his or her undressing being viewed by
7 another; or

8 (B) a place in which a reasonable person would expect to be safe from
9 unwanted intrusion or surveillance.

10 (6) “Sexual conduct” shall have the same meaning as in section 2821 of
11 this title.

12 (7) “Surveillance” means secret observation of the activities of another
13 person for the purpose of spying upon and invading the privacy of the person.

14 (8) “View” means the intentional looking upon another person for more
15 than a brief period of time, in other than a casual or cursory manner, with the
16 unaided eye or a device designed or intended to improve visual acuity.

17 (9) “Minor” means any person under 18 years of age.

18 (b) No person shall intentionally view, photograph, film, or record in any
19 format:

20 (1) the intimate areas of another person without that person’s knowledge
21 and consent while the person being viewed, photographed, filmed, or recorded

1 is in a place where he or she would have a reasonable expectation of
2 privacy; or

3 (2) the intimate areas of another person without that person’s knowledge
4 and consent and under circumstances in which the person has a reasonable
5 expectation of privacy.

6 (c) No person shall display or disclose to a third party any image recorded
7 in violation of subsection (b), (d), or (e) of this section.

8 (d) No person shall intentionally conduct surveillance or intentionally
9 photograph, film, or record in any format a person without that person’s
10 knowledge and consent while the person being surveilled, photographed,
11 filmed, or recorded is in a place where he or she would have a reasonable
12 expectation of privacy within a home or residence. Bona fide private
13 investigators and bona fide security guards engaged in otherwise lawful
14 activities within the scope of their employment are exempt from this
15 subsection.

16 (e) No person shall intentionally photograph, film, or record in any format
17 a person without that person’s knowledge and consent while that person is in a
18 place where a person has a reasonable expectation of privacy and that person is
19 engaged in sexual conduct.

1 (f) This section shall apply to a person who intentionally views,
2 photographs, films, or records the intimate areas of a person as part of a
3 security or theft prevention policy or program at a place of business.

4 (g) This section shall not apply to:

5 (1) a law enforcement officer conducting official law enforcement
6 activities in accordance with State and federal law; or

7 (2) official activities of the Department of Corrections, a law
8 enforcement agency, the Agency of Human Services, or a court for security
9 purposes or during the investigation of alleged misconduct by a person in the
10 custody of the Department of Corrections, a law enforcement agency, the
11 Agency of Human Services, or a court.

12 (h) This section is not intended to infringe upon the freedom of the press to
13 gather and disseminate news as guaranteed by the First Amendment to the
14 Constitution of the United States.

15 (i) It shall be an affirmative defense to a violation of subsection (b) of this
16 section that the defendant was a bona fide private investigator or bona fide
17 security guard conducting surveillance in the ordinary course of business, and
18 the violation was unintentional and incidental to otherwise legal surveillance.
19 However, an unintentional and incidental violation of subsection (b) of this
20 section shall not be a defense to a violation of subsection (c).

1 (j)(1) For a first offense, a person who violates subsection (b), (d), or (e) of
2 this section shall be imprisoned not more than two years or fined not more than
3 \$1,000.00, or both. For a second or subsequent offense, a person who violates
4 subsection (b), (d), or (e) of this section shall be imprisoned not more than
5 three years or fined not more than \$5,000.00, or both. A person who violates
6 subsection (c) of this section shall be imprisoned not more than five years or
7 fined not more than \$5,000.00, or both.

8 (2) If the victim is a minor and the person is 18 years of age or older:

9 (A) For a first offense, a person who violates subsection (b), (d), or
10 (e) of this section shall be imprisoned not more than three years or fined not
11 more than \$1,000.00, or both. For a second or subsequent offense, a person
12 who violates subsection (b), (d), or (e) of this section shall be imprisoned not
13 more than five years or fined not more than \$5,000.00, or both.

14 (B) A person who violates subsection (c) of this section shall be
15 imprisoned not more than seven years or fined not more than \$5,000.00, or
16 both.

17 Sec. 2. EFFECTIVE DATE

18 This act shall take effect on passage.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE