

SENATE BILL NO. 50

INTRODUCED BY J. FIELDER

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING OFFENSES RELATED TO THE VISUAL OBSERVATION OR RECORDATION OF A PERSON WITHOUT THE PERSON'S KNOWLEDGE; AMENDING SECTION 45-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 45-5-223, MCA, is amended to read:

"45-5-223. Surreptitious visual observation or recordation -- place of residence -- public establishment place -- exceptions. (1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if a the person purposely or knowingly hides, waits, or otherwise loiters within or in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner without the occupant's knowledge; or

(b) by means of an electronic or mechanical recording device, surreptitiously recording the visual image of any occupant in the residence without the occupant's knowledge.

(2) An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation in a public establishment. A person commits the offense of surreptitious visual observation or recordation in public if the person purposely or knowingly observes or records a visual image of the sexual or intimate parts of another person in a public place without the other person's knowledge when the victim has a reasonable expectation of privacy.

(3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection, prevention, or prosecution pursuant to 2-15-2015 or 39-71-211 while the officer, agent, employee, or private investigator is

1 acting in the course and scope of employment for legitimate investigative purposes.

2 (4) (a) A person convicted of the offense of surreptitious visual observation or recordation in a place of  
3 residence shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to  
4 exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000  
5 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall  
6 be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

7 (b) A person convicted of the offense of surreptitious visual observation or recordation in a public  
8 ~~establishment is guilty of a misdemeanor and~~ shall be fined an amount not to exceed \$1,000 or incarcerated for  
9 a term not to exceed 6 months, or both, if the victim was an adult. If the victim was a minor, a person convicted  
10 of the offense of surreptitious visual observation or recordation in public is guilty of a felony and shall be fined an  
11 amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both, ~~if the victim was a minor."~~

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13 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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