

105TH CONGRESS  
2D SESSION

# S. 2103

To provide protection from personal intrusion for commercial purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 20, 1998

Mrs. FEINSTEIN (for herself, Mr. HATCH, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide protection from personal intrusion for commercial purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Personal Privacy Pro-  
5       tection Act”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—Congress makes the following find-  
8       ings:

9               (1) Individuals and their families have been  
10       harassed and endangered by being persistently fol-

1       lowed or chased in a manner that puts them in rea-  
2       sonable fear of bodily injury, and in danger of seri-  
3       ous bodily injury or even death, by photographers,  
4       videographers, and audio recorders attempting to  
5       capture images or other reproductions of their pri-  
6       vate lives for commercial purposes.

7           (2) The legitimate privacy interests of individ-  
8       uals and their families have been violated by photog-  
9       raphers, videographers, and audio recorders who  
10      physically trespass in order to capture images or  
11      other reproductions of their private lives for com-  
12      mercial purposes, or who do so constructively  
13      through intrusive modern visual or auditory en-  
14      hancement devices, such as powerful telephoto lenses  
15      and hyperbolic microphones that enable invasion of  
16      private areas that would otherwise be impossible  
17      without trespassing.

18          (3) Such harassment and trespass threatens not  
19      only professional public persons and their families,  
20      but also private persons and their families for whom  
21      personal tragedies or circumstances beyond their  
22      control create media interest.

23          (4) Federal legislation is necessary to protect  
24      individuals and their families from persistent follow-  
25      ing or chasing for commercial purposes that causes

1 reasonable fear of bodily injury, because such har-  
2 assment is not directly regulated by applicable Fed-  
3 eral, State, and local statutory or common laws, be-  
4 cause those laws provide an uneven patchwork of  
5 coverage, and because those laws may not cover such  
6 activities when undertaken for commercial purposes.

7 (5) Federal legislation is necessary to prohibit  
8 and provide proper redress in Federal courts for  
9 trespass and constructive trespass using intrusive  
10 visual or auditory enhancement devices for commer-  
11 cial purposes, because technological advances such  
12 as telephoto lenses and hyperbolic microphones  
13 render inadequate existing common law and State  
14 and local regulation of such trespass and invasion of  
15 privacy.

16 (6) There is no right, under the first amend-  
17 ment to the Constitution of the United States, to  
18 persistently follow or chase another in a manner  
19 that creates a reasonable fear of bodily injury, to  
20 trespass, or to constructively trespass through the  
21 use of intrusive visual or auditory enhancement de-  
22 vices.

23 (7) This Act, and the amendments made by this  
24 Act, do not in any way regulate, prohibit, or create  
25 liability for publication or broadcast of any image or

1 information, but rather use narrowly tailored means  
2 to prohibit and create liability for specific dangerous  
3 and intrusive activities that the Federal Government  
4 has an important interest in preventing, and ensure  
5 a safe and secure private realm for individuals  
6 against intrusion, which the Federal Government  
7 has an important interest in ensuring.

8 (8) This Act protects against unwarranted har-  
9 assment, endangerment, invasion of privacy, and  
10 trespass in an appropriately narrowly tailored man-  
11 ner without abridging the exercise of any rights  
12 guaranteed under the first amendment to the Con-  
13 stitution of the United States, or any other provision  
14 of law.

15 (9) Congress has the affirmative power under  
16 section 8 of article I of the Constitution of the  
17 United States to enact this Act.

18 (10) Because this Act regulates only conduct  
19 undertaken in order to create products intended to  
20 be and routinely transmitted, bought, or sold in  
21 interstate or foreign commerce, or persons who trav-  
22 el in interstate or foreign commerce in order to en-  
23 gage in regulated conduct, the Act is limited prop-  
24 erly to regulation of interstate or foreign commerce.

1           (11) Photographs and other reproductions of  
2           the private activities of persons obtained through ac-  
3           tivities regulated by this Act, and the amendments  
4           made by this Act, are routinely reproduced and  
5           broadcast in interstate and international commerce.

6           (12) Photographers, videographers, and audio  
7           recorders routinely travel in interstate commerce in  
8           order to engage in the activities regulated by this  
9           Act, and the amendments made by this Act, with the  
10          intent, expectation, and routine result of gaining  
11          material that is bought and sold in interstate com-  
12          merce.

13          (13) The activities regulated by this Act, and  
14          the amendments made by this Act, occur routinely  
15          in the channels of interstate commerce, such as the  
16          persistent following or chasing of subjects in an in-  
17          appropriate manner on public streets and thorough-  
18          fares or in airports, and the use of public streets  
19          and thoroughfares, interstate and international air-  
20          ports, and travel in interstate and international wa-  
21          ters in order to physically or constructively trespass  
22          for commercial purposes.

23          (14) The activities regulated by this Act, and  
24          the amendments made by this Act, substantially af-  
25          fect interstate commerce by threatening the careers,

1       livelihoods, and rights to publicity of professional  
2       public persons in the national and international  
3       media, and by thrusting private persons into the na-  
4       tional and international media.

5           (15) The activities regulated by this Act, and  
6       the amendments made by this Act, substantially af-  
7       fect interstate commerce by restricting the move-  
8       ment of persons who are targeted by such activities  
9       and their families, often forcing them to curtail trav-  
10      el or appearances in public spaces, or, conversely,  
11      forcing them to travel in interstate commerce in  
12      order to escape from abuses regulated by this Act,  
13      and the amendments made by this Act.

14      (b) PURPOSES.—The purposes of this Act are—

15           (1) to protect individuals and their families  
16      against reasonable fear of bodily injury,  
17      endangerment, trespass, and intrusions on their pri-  
18      vacy due to activities undertaken in connection with  
19      interstate and international commerce in reproduc-  
20      tion and broadcast of their private activities;

21           (2) to protect interstate commerce affected by  
22      such activities, including the interstate commerce of  
23      individuals who are the subject of such activities;  
24      and

1           (3) to establish the right of private parties in-  
 2           jured by such activities, as well as the Attorney Gen-  
 3           eral of the United States and State attorneys gen-  
 4           eral in appropriate cases, to bring actions for appro-  
 5           priate relief.

6 **SEC. 3. CRIMINAL OFFENSE.**

7           (a) IN GENERAL.—Chapter 89 of title 18, United  
 8           States Code, is amended by adding at the end the follow-  
 9           ing:

10 **“§ 1822. Harassment for commercial purposes**

11           “(a) DEFINITIONS.—In this section:

12           “(1) FOR COMMERCIAL PURPOSES.—

13           “(A) IN GENERAL.—The term ‘for com-  
 14           mercial purposes’ means with the expectation of  
 15           sale, financial gain, or other consideration.

16           “(B) RULE OF CONSTRUCTION.—For pur-  
 17           poses of this section, a visual image, sound re-  
 18           cording, or other physical impression shall not  
 19           be found to have been, or intended to have  
 20           been, captured for commercial purposes unless  
 21           it was intended to be, or was in fact, sold, pub-  
 22           lished, or transmitted in interstate or foreign  
 23           commerce, or unless the person attempting to  
 24           capture such image, recording, or impression  
 25           moved in interstate or foreign commerce in

1           order to capture such image, recording, or im-  
2           pression.

3           “(2) HARASSES.—The term ‘harasses’ means  
4           persistently physically follows or chases a person in  
5           a manner that causes the person to have a reason-  
6           able fear of bodily injury, in order to capture by a  
7           visual or auditory recording instrument any type of  
8           visual image, sound recording, or other physical im-  
9           pression of the person for commercial purposes.

10          “(b) PROHIBITION AND PENALTIES.—Whoever  
11          harasses any person within the United States or the spe-  
12          cial maritime and territorial jurisdiction of the United  
13          States—

14               “(1) if death is proximately caused by such har-  
15               assment, shall be imprisoned not less than 20 years  
16               and fined under this title;

17               “(2) if serious bodily injury is proximately  
18               caused by such harassment, shall be imprisoned not  
19               less than 5 years and fined under this title; and

20               “(3) if neither death nor serious bodily injury  
21               is proximately caused by such harassment, shall be  
22               imprisoned not more than 1 year, fined under this  
23               title, or both.

24          “(c) CAUSE OF ACTION.—Any person who is legally  
25          present in the United States and who is subjected to a



1 violation of this section may, in a civil action against the  
 2 person engaging in the violation, obtain any appropriate  
 3 relief, including compensatory damages, punitive damages,  
 4 and injunctive and declaratory relief. In any civil action  
 5 or proceeding to enforce a provision of this section, the  
 6 court shall allow the prevailing party reasonable attorney's  
 7 fees as part of the costs. In awarding attorney's fees, the  
 8 court shall include expert fees as part of the attorney's  
 9 fees.

10       “(d) LIMITATION ON DEFENSES.—It is not a defense  
 11 to a prosecution or civil action under this section that—

12               “(1) no image or recording was captured; or

13               “(2) no image or recording was sold.

14       “(e) USE OF IMAGES.—Nothing in this section may  
 15 be construed to make the sale, transmission, publication,  
 16 broadcast, or use of any image or recording of the type  
 17 or under the circumstances described in this section in any  
 18 otherwise lawful manner by any person subject to criminal  
 19 charge or civil liability.

20       “(f) LIMITATION.—Only a person physically present  
 21 at the time of, and engaging or assisting another in engag-  
 22 ing in, a violation of this section is subject to criminal  
 23 charge or civil liability under this section. A person shall  
 24 not be subject to such charge or liability by reason of the  
 25 conduct of an agent, employee, or contractor of that per-

1 son or because images or recordings captured in violation  
 2 of this section were solicited, bought, used, or sold by that  
 3 person.

4 “(g) **LAW ENFORCEMENT EXEMPTION.**—The prohi-  
 5 bitions of this section do not apply with respect to official  
 6 law enforcement activities.

7 “(h) **SAVINGS.**—Nothing in this section shall be  
 8 taken to preempt any right or remedy otherwise available  
 9 under Federal, State or local law.”.

10 (b) **TECHNICAL AMENDMENT.**—The analysis for  
 11 chapter 89 of title 18, United States Code, is amended  
 12 by adding at the end the following:

“1822. Harassment for commercial purposes.”.

13 **SEC. 4. PERSONAL INTRUSION FOR COMMERCIAL PUR-**  
 14 **POSES.**

15 (a) **DEFINITION OF FOR COMMERCIAL PURPOSES.**—

16 (1) **IN GENERAL.**—In this section, the term ‘for  
 17 commercial purposes’ means with the expectation of  
 18 sale, financial gain, or other consideration.

19 (2) **RULE OF CONSTRUCTION.**—For purposes of  
 20 this section, a visual image, sound recording, or  
 21 other physical impression shall not be found to have  
 22 been, or intended to have been, captured for com-  
 23 mercial purposes unless it was intended to be, or  
 24 was in fact, sold, published, or transmitted in inter-  
 25 state or foreign commerce, or unless the person at-

1       tempting to capture such image, recording, or im-  
2       pression moved in interstate or foreign commerce in  
3       order to capture such image, recording, or impres-  
4       sion.

5       (b) TRESPASS FOR COMMERCIAL PURPOSES AND IN-  
6       VASION OF LEGITIMATE INTEREST IN PRIVACY FOR COM-  
7       MERCIAL PURPOSES.—

8               (1) TRESPASS FOR COMMERCIAL PURPOSES.—It  
9       shall be unlawful to trespass on private property in  
10      order to capture any type of visual image, sound re-  
11      cording, or other physical impression of any person  
12      for commercial purposes.

13             (2) INVASION OF LEGITIMATE INTEREST IN  
14      PRIVACY FOR COMMERCIAL PURPOSES.—It shall be  
15      unlawful to capture any type of visual image, sound  
16      recording, or other physical impression for commer-  
17      cial purposes of a personal or familial activity  
18      through the use of a visual or auditory enhancement  
19      device, even if no physical trespass has occurred,  
20      if—

21               (A) the subject of the image, sound record-  
22               ing, or other physical impression has a reason-  
23               able expectation of privacy with respect to the  
24               personal or familial activity captured; and

1 (B) the image, sound recording, or other  
2 physical impression could not have been cap-  
3 tured without a trespass if not produced by the  
4 use of the enhancement device.

5 (c) CAUSE OF ACTION.—Any person who is legally  
6 present in the United States who is subjected to a viola-  
7 tion of this section may, in a civil action against the person  
8 engaging in the violation, obtain any appropriate relief,  
9 including compensatory damages, punitive damages and  
10 injunctive and declaratory relief. A person obtaining relief  
11 may be either or both the owner of the property or the  
12 person whose visual or auditory impression has been cap-  
13 tured. In any civil action or proceeding to enforce a provi-  
14 sion of this section, the court shall allow the prevailing  
15 party reasonable attorney’s fees as part of the costs. In  
16 awarding attorney’s fees, the court shall include expert  
17 fees as part of the attorney’s fees.

18 (d) LIMITATION ON DEFENSES.—It is not a defense  
19 to an action under this section that—

20 (1) no image or recording was captured; or

21 (2) no image or recording was sold.

22 (e) USE OF IMAGES.—Nothing in this section may  
23 be construed to make the sale, transmission, publication,  
24 broadcast, or use of any image or recording of the type  
25 or under the circumstances described herein in any other-

1 wise lawful manner by any person subject to criminal  
2 charge or civil liability.

3 (f) LIMITATION.—Only a person physically present at  
4 the time of, and engaging or assisting another in engaging  
5 in, a violation of this section is subject to civil liability  
6 under this section. A person shall not be subject to such  
7 liability by reason of the conduct of an agent, employee,  
8 or contractor of that person, or because images or record-  
9 ings captured in violation of this section were solicited,  
10 bought, used, or sold by that person.

11 (g) LAW ENFORCEMENT EXEMPTION.—The prohibi-  
12 tions of this section do not apply with respect to official  
13 law enforcement activities.

14 (h) SAVINGS.—Nothing in this section shall be taken  
15 to preempt any right or remedy otherwise available under  
16 Federal, State, or local law.

17 **SEC. 5. SEVERABILITY.**

18 If any provision of this Act, an amendment made by  
19 this Act, or the application of such provision or amend-  
20 ment to any person or circumstance is held to be unconsti-  
21 tutional, the remainder of this Act, the amendments made  
22 by this Act, and the application of the provisions of such  
23 to any person or circumstance shall not be affected there-  
24 by.

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