

Part 4 Offenses Against Privacy

76-9-401 Definitions.

For purposes of this part:

- (1) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.
- (2) "Eavesdrop" means to overhear, record, amplify, or transmit any part of a wire or oral communication of others without the consent of at least one party thereto by means of any electronic, mechanical, or other device.
- (3) "Public" includes any professional or social group of which the victim of a defamation is a member.

Enacted by Chapter 196, 1973 General Session

76-9-402 Privacy violation.

- (1)
 - (a) A property owner has an expectation of privacy regarding characteristics, data, or information pertaining to the owner's property that:
 - (i) is not immediately apparent through routine visual observation of the property; and
 - (ii) requires ground-penetrating technology to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property.
 - (2) A person is guilty of privacy violation if, except as authorized by law, the person:
 - (a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;
 - (b) installs, or uses after unauthorized installation in a private place, without the consent of the person or persons entitled to privacy in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the private place;
 - (c) installs or uses outside of a private place a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place, without the consent of the person or persons entitled to privacy in the private place; or
 - (d) uses ground-penetrating technology, without the consent of the property owner, to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property of another for which the property owner has an expectation of privacy as described in Subsection (1).
- (3) A person is not guilty of a violation of this section if:
 - (a) the device used is an unmanned aircraft;
 - (b) the person is operating the unmanned aircraft for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and
 - (c) any conduct described in Subsection (2) that occurs via the unmanned aircraft is solely incidental to the lawful commercial or educational use of the unmanned aircraft.
- (4) For a person who commits a violation of Subsection (2), a court may order the person to remove and destroy any data collected by the person in the commission of the violation of Subsection (2).

(5) Privacy violation is a class B misdemeanor.

(6)

(a) This section does not apply to lawful practices of:

- (i) a law enforcement agency; or
- (ii) another government entity.

(b) Subsection (2)(d) does not apply to a land surveyor if:

- (i) the land surveyor is performing a survey service in good faith pursuant to a bona fide contract; and
- (ii) for any data pertaining to property not owned by a party to the contract described in Subsection (6)(b)(i) that is captured incidentally by the land surveyor, the land surveyor:
 - (A) does not share, publish, sell, or distribute any incidentally captured data pertaining to property that is not relevant to the contract described in Subsection (6)(b)(i); and
 - (B) upon completion of the contract, deletes or destroys any data pertaining to property that is not the subject of the contract.

Amended by Chapter 510, 2023 General Session

76-9-403 Communication Abuse.

(1) A person commits communication abuse if, except as authorized by law, he:

(a) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately; this paragraph does not extend to:

- (i) Overhearing of messages through a regularly installed instrument on a telephone party line or on an extension; or
- (ii) Interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation and use; or

(b) Divulges without consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(2) Communication abuse is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-406 Injunctive relief against privacy offenses -- Damages.

Any person, or the heirs of any deceased person, who has been injured by a violation of this part may bring an action against the person who committed the violation. If in the action the court finds the defendant is violating or has violated any of the provisions of this part, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiffs be alleged or proved, but if damages are alleged and proved, the plaintiff in the action shall be entitled to recover from the defendant the actual damages, if any, sustained in addition to injunctive relief. A finding that the defendant is in violation of this part shall entitle the plaintiff to reasonable attorney's fees. Exemplary damages may be awarded where the violation is found to be malicious.

Enacted by Chapter 196, 1973 General Session

76-9-407 Crime of abuse of personal identity -- Penalty -- Defense -- Permitting civil action.

(1) The definitions in Section 45-3-2 apply to this section.

- (2) Any person is guilty of a class B misdemeanor who knowingly or intentionally causes the publication of an advertisement in which the personal identity of an individual is used in a manner which expresses or implies that the individual approves, endorses, has endorsed, or will endorse the specific subject matter of the advertisement without the consent for such use by the individual.
- (3) It is an affirmative defense that the person causing the publication of the advertisement reasonably believed that the person whose personal identity was to be used had consented to its use.
- (4) Upon conviction of an offense under this section, unless waived by the victim, the court shall order that, within 30 days of the conviction, the person convicted shall issue a public apology or retraction to whomever received the advertisement. The apology or retraction shall be of similar size and placement as the original advertisement.
- (5) Nothing in this section prohibits a civil action under Title 45, Chapter 3, Abuse of Personal Identity Act.

Enacted by Chapter 146, 1999 General Session

76-9-408 Unlawful installation of a tracking device.

- (1) As used in this section:
 - (a) "Motor vehicle" means the same as that term is defined in Subsection 41-12a-103(4).
 - (b) "Private investigator" means an individual who is:
 - (i) licensed as a private investigator under Title 53, Chapter 9, Private Investigator Regulation Act; and
 - (ii) acting in the capacity of a private investigator.
 - (c) "Protective order" means a protective order, stalking injunction, or restraining order issued by a court of any jurisdiction.
 - (d)
 - (i) "Tracking device" means a device used for the primary purpose of revealing the device's location or movement by the transmission or recording of an electronic signal.
 - (ii) "Tracking device" does not include location technology installed on a vehicle by the vehicle manufacturer or a commercial vehicle dealer that transmits electronic signals for the purpose of data collection, if the data collection is anonymized.
- (2) Except as provided in Subsection (3), a person is guilty of unlawful installation of a tracking device if the person knowingly installs, or directs another to install, a tracking device on a motor vehicle owned or leased by another person, without the permission of the owner or lessee of the vehicle.
- (3) A person is not guilty of unlawful installation of a tracking device if the person:
 - (a)
 - (i) is a licensed private investigator installing the tracking device for a legitimate business purpose; and
 - (ii) installs the tracking device on a motor vehicle that is not:
 - (A) owned or leased by an individual under the protection of a protective order; or
 - (B) operated by an individual under the protection of a protective order who resides with, or is an immediate family member of, the owner or lessee of the motor vehicle; or
 - (b) installs the tracking device pursuant to a court order.
- (4) Unlawful installation of a tracking device is a class A misdemeanor.

- (5) This section does not apply to a peace officer, acting in the peace officer's official capacity, who installs a tracking device on a motor vehicle in the course of a criminal investigation or pursuant to a court order.
- (6) Before installing a tracking device on a motor vehicle under Subsection (3), a private investigator shall request confirmation from a state entity with access to updated protective order records, that:
 - (a) the owner or lessee of the vehicle is not under the protection of a protective order; and
 - (b) an individual who resides with, or is an immediate family member of, the owner or lessee of the motor vehicle is not under the protection of a protective order.
- (7) On request from a licensed private investigator, a state entity, including a law enforcement agency, with access to protective order records shall confirm or deny the existence of a protective order, disclosing only whether an individual named by the private investigator is under the protection of a protective order issued in any jurisdiction.
- (8) A private investigator may not disclose the information obtained under Subsection (7) to any person, except as permitted by law.
- (9) On request from the Bureau of Criminal Identification, a private investigator who installs a tracking device on a motor vehicle shall disclose the purpose of the tracking device to the Bureau of Criminal Identification.

Enacted by Chapter 372, 2019 General Session