

ACT 48

S.B. NO. 1107

A Bill for an Act Relating to Chapter 711, Hawaii Revised Statutes.

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

SECTION 1. Section 711-1100, Hawaii Revised Statutes, is amended to read as follows:

“§711-1100 Definitions [~~of terms in this chapter~~]. In this chapter, unless a different meaning is plainly [is] required[:], or the definition is otherwise limited by this section:

“Animal” includes every living creature, except a human being.

“Cruelty”, “torture” or “torment” includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

“Facsimile” means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

“Necessary sustenance” means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the

reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;
- (3) Access to protection from wind, rain, or sun; and
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health.

“Obstructs” means renders impassable without unreasonable inconvenience or hazard.

“Pet animal” means a dog, cat, rabbit, guinea pig, domestic rat or mouse, or caged birds (passeriformes, piciformes, and psittaciformes only).

“Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

“Public” means affecting or likely to affect a substantial number of persons.

“Public place” means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

“Record,” for the purposes of sections 711-1110.9 and 711.1111, means to videotape, film, photograph, or archive electronically.”

SECTION 2. Section 711-1101, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or threatening, or in violent or tumultuous behavior; or
- (b) Makes unreasonable noise; or
- (c) ~~[Makes any offensively coarse utterance, gesture, or display,]~~ Subjects another person to offensively coarse behavior or [addresses] abusive language [to any person present,] which is likely to provoke a violent response; or
- (d) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit; or
- (e) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.”

SECTION 3. Section 711-1110.9, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§711-1110.9[H] Violation of privacy in the first degree.** (1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, ~~[photographing, videotaping, filming,]~~ recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place, or uses any such unauthorized installation.

(2) Violation of privacy in the first degree is a class C felony. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.”

SECTION 4. Section 711-1111, Hawaii Revised Statutes, is amended to read as follows:

“§711-1111 Violation of privacy in the second degree. (1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

- (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or
- (b) Installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, [~~photographing, videotaping, filming,~~] recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity, or uses any such unauthorized installation; or
- (c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or
- (d) Covertly records or broadcasts an image of another person’s intimate area underneath clothing, by use of any device, and such image is taken while that person is in a public place and without that person’s consent;
or
- [(d)] (e) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this subsection does not apply to:
 - (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
 - (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or
- [(e)] (f) Divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if the accused learned of the message in the course of employment with an agency engaged in transmitting it; or
- [(f)] (g) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.

(2) For the purposes of this section:

“Intimate areas” means any portion of a person’s underwear, pubic area, anus, buttocks, vulva, genitals, or female breast.

“Intimate areas underneath clothing” does not include intimate areas visible through a person’s clothing or intimate areas exposed in public.

“Public place” means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.

[(2)] (3) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.”

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SECTION 5. Statutory material to be repealed is bracketed and ~~stricken~~.
New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved May 7, 2003.)