

# HOUSE BILL 849

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7lr3087  
CF 7lr0461

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By: **Delegates Moon, Atterbeary, Conaway, and Sanchez**

Introduced and read first time: February 3, 2017

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Physical Invasion of Privacy – Civil Cause of Action**

3 FOR the purpose of prohibiting a person from knowingly entering onto the land or into the  
4 airspace above the land of another person without permission or otherwise  
5 committing a trespass in order to capture a visual image, sound recording, or other  
6 physical impression of the other person engaging in a certain activity in a certain  
7 manner; prohibiting a person from violating this Act through the use of any device,  
8 regardless of whether there is a physical trespass, in certain circumstances;  
9 providing for a civil cause of action against a person for violating this Act; providing  
10 that a certain person is entitled to recover certain damages from a person violating  
11 this Act; providing for additional damages if a violation of this Act was done for a  
12 commercial purpose; authorizing a court to grant certain equitable relief in certain  
13 circumstances; providing that this Act shall not be construed to impair or limit  
14 certain otherwise lawful activities; defining certain terms; and generally relating to  
15 invasion of privacy.

16 BY adding to

17 Article – Courts and Judicial Proceedings

18 Section 3–2101 to be under the new subtitle “Subtitle 21. Physical Invasion of  
19 Privacy”

20 Annotated Code of Maryland

21 (2013 Replacement Volume and 2016 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

23 That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

25 **SUBTITLE 21. PHYSICAL INVASION OF PRIVACY.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **3-2101.**

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
3 INDICATED.

4 (2) "FOR A COMMERCIAL PURPOSE" MEANS AN ACT DONE WITH THE  
5 EXPECTATION OF A SALE, FINANCIAL GAIN, OR OTHER CONSIDERATION.

6 (3) "PRIVATE, PERSONAL, AND FAMILIAL ACTIVITY" INCLUDES:

7 (I) INTIMATE ASPECTS OF A PERSON'S PERSONAL LIFE UNDER  
8 CIRCUMSTANCES IN WHICH THE PERSON HAS A REASONABLE EXPECTATION OF  
9 PRIVACY;

10 (II) INTERACTION WITH A PERSON'S FAMILY OR SIGNIFICANT  
11 OTHERS UNDER CIRCUMSTANCES IN WHICH THE PERSON HAS A REASONABLE  
12 EXPECTATION OF PRIVACY;

13 (III) ANY ACTIVITY THAT OCCURS ON A RESIDENTIAL PROPERTY  
14 UNDER CIRCUMSTANCES IN WHICH A PERSON HAS A REASONABLE EXPECTATION OF  
15 PRIVACY; AND

16 (IV) OTHER ASPECTS OF A PERSON'S PRIVATE AFFAIRS UNDER  
17 CIRCUMSTANCES IN WHICH THE PERSON HAS A REASONABLE EXPECTATION OF  
18 PRIVACY.

19 (B) (1) A PERSON MAY NOT, IN A MANNER THAT WOULD BE OFFENSIVE TO  
20 A REASONABLE PERSON, KNOWINGLY ENTER ONTO THE LAND OR INTO THE  
21 AIRSPACE ABOVE THE LAND OF ANOTHER PERSON WITHOUT PERMISSION OR  
22 OTHERWISE COMMIT A TRESPASS IN ORDER TO CAPTURE A VISUAL IMAGE, SOUND  
23 RECORDING, OR OTHER PHYSICAL IMPRESSION OF THE OTHER PERSON ENGAGING  
24 IN A PRIVATE, PERSONAL, OR FAMILIAL ACTIVITY.

25 (2) A PERSON MAY NOT VIOLATE PARAGRAPH (1) OF THIS  
26 SUBSECTION THROUGH THE USE OF ANY DEVICE, REGARDLESS OF WHETHER THERE  
27 IS A PHYSICAL TRESPASS, IF THE IMAGE, SOUND RECORDING, OR OTHER PHYSICAL  
28 IMPRESSION COULD NOT HAVE BEEN ACHIEVED WITHOUT A TRESPASS UNLESS THE  
29 DEVICE WAS USED.

30 (C) (1) A PERSON WHOSE VISUAL IMAGE, SOUND RECORDING, OR OTHER  
31 PHYSICAL IMPRESSION WAS CAPTURED IN VIOLATION OF SUBSECTION (B) OF THIS  
32 SECTION MAY BRING A CIVIL ACTION AGAINST A PERSON WHO VIOLATES OR CAUSES

1 ANOTHER TO VIOLATE SUBSECTION (B) OF THIS SECTION AND IS ENTITLED TO  
2 RECOVER:

3 (I) ACTUAL DAMAGES BUT NOT LESS THAN LIQUIDATED  
4 DAMAGES COMPUTED AT THE RATE OF \$500 A DAY FOR EACH DAY A VIOLATION  
5 OCCURS OR \$5,000, WHICHEVER IS GREATER; AND

6 (II) A REASONABLE ATTORNEY'S FEE AND OTHER LITIGATION  
7 COSTS REASONABLY INCURRED.

8 (2) IF THE ACTIONS TAKEN BY A DEFENDANT IN VIOLATION OF THIS  
9 SECTION WERE COMMITTED FOR A COMMERCIAL PURPOSE, IN ADDITION TO THE  
10 DAMAGES DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE DEFENDANT  
11 SHALL BE SUBJECT TO DISGORGEMENT TO THE PLAINTIFF OF ANY PROCEEDS OR  
12 OTHER CONSIDERATION OBTAINED AS A RESULT OF THE VIOLATION OF SUBSECTION  
13 (B) OF THIS SECTION.

14 (D) IN AN ACTION UNDER THIS SECTION, THE COURT MAY GRANT  
15 EQUITABLE RELIEF, INCLUDING AN INJUNCTION AND RESTRAINING ORDER  
16 AGAINST FURTHER VIOLATIONS OF THIS SECTION.

17 (E) THIS SECTION MAY NOT BE CONSTRUED TO IMPAIR OR LIMIT  
18 OTHERWISE LAWFUL ACTIVITIES OF LAW ENFORCEMENT PERSONNEL OR  
19 EMPLOYEES OF GOVERNMENTAL AGENCIES OR OTHER ENTITIES, EITHER PUBLIC OR  
20 PRIVATE, WHO, IN THE COURSE AND SCOPE OF EMPLOYMENT, AND SUPPORTED BY  
21 REASONABLE AND ARTICULABLE SUSPICION, ATTEMPT TO CAPTURE A VISUAL  
22 IMAGE, SOUND RECORDING, OR OTHER PHYSICAL IMPRESSION OF A PERSON  
23 DURING AN INVESTIGATION, SURVEILLANCE, OR MONITORING OF CONDUCT TO  
24 OBTAIN EVIDENCE OF:

25 (1) SUSPECTED ILLEGAL ACTIVITY OR OTHER MISCONDUCT;

26 (2) A SUSPECTED VIOLATION OF AN ADMINISTRATIVE RULE OR  
27 REGULATION;

28 (3) SUSPECTED FRAUDULENT CONDUCT; OR

29 (4) AN ACTIVITY INVOLVING A VIOLATION OF BUSINESS PRACTICES  
30 OR CONDUCT OF PUBLIC OFFICIALS ADVERSELY AFFECTING PUBLIC WELFARE,  
31 HEALTH, OR SAFETY.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2017.