

SENATE BILL 615

D3

7lr0461
CF HB 849

By: **Senator Ramirez**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

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.**

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.