

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 849  
Judiciary

(Delegate Moon, *et al.*)

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Courts - Physical Invasion of Privacy - Civil Cause of Action

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This bill prohibits a person from engaging in specified trespass-related activities to capture visual images, sound recordings, or other physical impressions of a person engaging in private, personal, or familial activities. A person whose visual image, sound recording, or other physical impression is captured may bring a civil action for damages and other specified relief.

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Fiscal Summary

**State Effect:** The bill is not expected to materially affect State finances or District Court operations.

**Local Effect:** The bill is not expected to materially affect local finances or circuit court operations.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The bill prohibits a person from knowingly entering onto the land or into the airspace above the land of another person without permission or otherwise committing a trespass in order to capture a visual image, sound recording, or other physical impression of the other person engaging in a private, personal, or familial activity in a manner that would be offensive to a reasonable person.

A person is also prohibited from engaging in this activity through the use of any device, regardless of whether there is a physical trespass, if the image, sound recording, or other

physical impression could not have been achieved without a trespass unless the device was used.

A person whose visual image, sound recording, or other physical impression is captured as a result of these prohibited activities may bring a civil action against the violator or a person who causes another person to commit a violation of the bill's prohibitions. A person who brings such an action is entitled to recover (1) actual damages but not less than liquidated damages computed at the rate of \$500 a day for each day a violation occurs or \$5,000, whichever is greater and (2) a reasonable attorney's fee and other litigation costs reasonably incurred.

If the actions taken by a defendant were committed for a commercial purpose, in addition to other damages authorized by the bill, the defendant must also be subject to "disgorgement to the plaintiff" of any proceeds or other consideration obtained as a result of the violation. As a result, imposition of the disgorgement remedy established by the bill requires that the defendant give to the plaintiff the compensation paid for the commercial contract, plus any additional compensation or benefit derived from committing the breach of privacy.

The court may grant equitable relief, including an injunction and restraining order against further violations.

The provisions of the bill may not be construed to impair or limit otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private, who, in the course and scope of employment, and supported by reasonable and articulable suspicion, attempt to capture a visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of:

- suspected illegal activity or other misconduct;
- a suspected violation of an administrative rule or regulation;
- suspected fraudulent conduct; or
- an activity involving a violation of business practices or conduct of public officials adversely affecting public welfare, health, or safety.

**Current Law:** The tort of invasion of privacy can take many forms, such as (1) the unreasonable intrusion upon the seclusion of another; (2) the appropriation of another person's name or likeness; (3) giving unreasonable publicity to another person's private life; or (4) publicity which unreasonably places another person in a false light before the public. Invasion of privacy via unreasonable intrusion occurs when a person intentionally

intrudes upon the solitude or seclusion of another person or another person's private affairs in a manner that is highly offensive to a reasonable person.

*Trespass on Posted Property:* A person may not enter or trespass on property that is posted conspicuously against trespass by (1) signs placed where they reasonably may be seen or (2) paint marks meeting specified criteria. Violators are guilty of a misdemeanor, punishable by (1) imprisonment for up to 90 days and/or a \$50 maximum fine for a first violation; (2) imprisonment for up to six months and/or a \$1,000 maximum fine for a second violation occurring within two years after the first violation; and (3) imprisonment for up to one year and/or a \$2,500 maximum fine for each subsequent violation occurring within two years after the preceding violation.

*Wanton Trespass on Private Property:* A person may not enter or cross over private property or board the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so, unless entering or crossing under a good faith claim of right or ownership. A person is also prohibited from remaining on private property including the boat or other marine vessel of another, after having been notified by the owner or the owner's agent not to do so. Violators are guilty of a misdemeanor, punishable by (1) imprisonment for up to 90 days and/or a \$500 maximum fine for a first violation; (2) imprisonment for up to six months and/or a maximum fine of \$1,000 for a second violation occurring within two years after the first violation; and (3) imprisonment for up to one year and/or a \$2,500 maximum fine for each subsequent violation occurring within two years after the preceding violation.

*Entry on Property – Invading Privacy of Occupants:* A person may not enter on the property of another for the purpose of invading the privacy of an occupant of a building or enclosure located on the property by looking into a window, door, or other opening. Violators are guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a \$500 maximum fine.

**Background:** Unmanned aerial vehicles (UAVs), or drones as they are commonly known, have become increasingly popular devices, and not just among aviation hobbyists. These aerial vehicles come in various sizes, ranging from the size of an insect (nanodrones or micro-UAVs) to the size of a jetliner. Drones are operated by remote control with personnel on the ground and/or autonomous programming. The entire system required to operate a drone – the personnel, the programming or digital network, and the aircraft – is referred to as a UAS.

UAVs have been used in numerous applications, including photography, firefighting, surveillance, warfare, search and rescue, wildlife tracking, and border patrol.

However, the popularity of UAVs has also raised privacy concerns and has generated discussion on the right to privacy of individual citizens against privately operated UAVs. There have also been multiple news reports of individuals shooting down drones flying over their property and alerting police of suspected surveillance by privately operated drones.

States have responded to these concerns by enacting privacy-related legislation. For instance, in 2015, California enacted legislation establishing that a person is liable for physical invasion of privacy when that person knowingly engages in activities similar to the ones listed in the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 615 (Senator Ramirez) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Law Encyclopedia; National Conference of State Legislatures; consumerreports.org; slate.com; *Chicago Tribune*; zdnet.com; New York University School of Law; Department of Legislative Services

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