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SENATE BILL NO. 584

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend the Code of Virginia by adding sections numbered 8.01-40.4, 18.2-130.1, 18.2-130.2, and 18.2-130.3, relating to unmanned aircraft systems; invasion of privacy; unlawful use; penalties.

Patron—McEachin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 8.01-40.4, 18.2-130.1, 18.2-130.2, and 18.2-130.3 as follows:

§ 8.01-40.4. Unmanned aircraft system; invasion of privacy; civil action.

A. Any person who without lawful authority uses an unmanned aircraft system, as defined in § 19.2-60.1, to enter into the airspace above the land of another person to capture or attempt to capture an image, including the capture of a visual image, sound waves, or thermal, infrared, ultraviolet, or visible light waves or other electromagnetic waves, of private property or an individual located on such private property without the consent of the landowner or other person lawfully in charge of such property is liable for physical invasion of privacy.

B. Any person without lawful authority who uses an unmanned aircraft system, as defined in § 19.2-60.1, to capture or attempt to capture an image, including the capture of a visual image, sound waves, or thermal, infrared, ultraviolet, or visible light waves or other electromagnetic waves, of private property or an individual located on such private property without the consent of the landowner or other person lawfully in charge of such property is liable for constructive invasion of privacy, regardless of whether there is physical entry onto the land or into the airspace above the land of another person, if such image could not have been obtained without such physical entry unless the device was used.

C. Any person found in violation of this section shall be liable to the plaintiff for actual damages or \$1,000, whichever is greater, in addition to reasonable attorney fees and costs.

D. If actual damages are awarded, the court may, in its discretion, award punitive damages.

§ 18.2-130.1. Use of unmanned aircraft for peeping or spying into dwelling or enclosure; penalty.

A. Except as authorized in § 19.2-60.1, it shall be unlawful for any person to use an unmanned aircraft system, as defined in § 19.2-60.1, to knowingly and intentionally peep, spy, or attempt to peep or spy into or through a window, door, or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure, or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, under circumstances that would violate the occupant's reasonable expectation of privacy.

B. Except as authorized in § 19.2-60.1, it shall be unlawful for any person to use an unmanned aircraft, as defined in § 19.2-60.1, to knowingly and intentionally peep, spy, or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom, or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks, or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

C. A violation of this section is a Class 2 misdemeanor.

§ 18.2-130.2. Use of unmanned aircraft system for surveillance; penalty.

Except as authorized in § 19.2-60.1, any person who uses an unmanned aircraft system, as defined in § 19.2-60.1, to capture an image, including the capture of sound waves or thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, of private property or an individual located on such private property without the consent of the landowner or other person lawfully in charge of such private property with the intent to conduct surveillance on such property or individual is guilty of a Class 3 misdemeanor. Any person who disseminates or sells an image captured in violation of this section is guilty of a Class 2 misdemeanor. It shall be an affirmative defense to a violation of this section that the person who captured the image destroyed the image as soon as the person had knowledge that such image was captured.

§ 18.2-130.3. Use of unmanned aircraft system for capturing photographic or video images; penalty.

INTRODUCED

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59 *Except as authorized in § 19.2-60.1, any person who uses an unmanned aircraft system, as defined in*
60 *§ 19.2-60.1, to capture an image, including the capture of sound waves or thermal, infrared, ultraviolet,*
61 *visible light, or other electromagnetic waves, of private real property or of an individual located on*
62 *private real property after having been given written notice by the individual or the landowner or other*
63 *person lawfully in charge of such private real property that such individual objects to having such*
64 *images taken is guilty of a Class 3 misdemeanor. Any person who disseminates or sells an image*
65 *captured in violation of this section is guilty of a Class 2 misdemeanor. It shall be an affirmative*
66 *defense to a violation of this section that the person who captured the image destroyed the image as*
67 *soon as the person received written notice pursuant to this section.*