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## SENATE BILL NO. 584

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 8, 2016)

(Patron Prior to Substitute—Senator McEachin)

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

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, and 18.2-130.2 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 an individual located on private property without the consent of the landowner or other person lawfully in charge of such property under circumstances where the individual whose image is created would have a reasonable expectation of privacy, and with the primary intent to create an image of the individual depicted in violation of the reasonable expectation of privacy of such individual, is liable for invasion of privacy.

B. Subsection A shall not apply to the otherwise lawful use of an unmanned aircraft system if the primary purpose of such use is not the violation of the reasonable expectation of privacy of the person depicted.

C. Any person found in violation of this section shall be liable to the plaintiff for actual damages.

D. If actual damages are awarded, the court or jury 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; penalties.**

A. Except as authorized in § 19.2-60.1, it is unlawful for any person, without lawful authority, to use an unmanned aircraft system, as defined in § 19.2-60.1, to enter into the airspace above the private real property of another person and knowingly and intentionally capture an image, including the capture of sound waves or thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, of an individual located on such real property (i) without the consent of the owner of such property or other person lawfully in charge of such property, (ii) under circumstances where the individual whose image is created would have a reasonable expectation of privacy, and (iii) with the primary intent to create an image of the individual depicted in violation of the reasonable expectation of privacy of such individual. A violation of this section is a Class 4 misdemeanor. Any person who disseminates or sells an image captured in violation of this section is guilty of a Class 3 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.

B. This section shall not apply to any person capturing an image of an individual that is reasonably related to any lawful business, purpose, or activity if the primary purpose of such capture is not the violation of the reasonable expectation of privacy of the individual depicted.