

SB0219S02 compared with SB0219

~~{deleted text}~~ shows text that was in SB0219 but was deleted in SB0219S02.

inserted text shows text that was not in SB0219 but was inserted into SB0219S02.

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Senator Ronald M. Winterton proposes the following substitute bill:

CRIMINAL ~~{TRESPASS AND}~~ PRIVACY VIOLATION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronald M. Winterton

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to criminal ~~{trespass}~~privacy violation to include ~~{a trespass to}~~the capture of data, information, or characteristics of property for which the owner has an expectation of privacy.

Highlighted Provisions:

This bill:

- ▶ codifies an expectation of privacy for characteristics, data, or information about an owner's property that:
 - is not immediately apparent through routine visual observation; and
 - requires advanced technology to capture the information about the property;
- ▶ amends the offense of ~~{criminal trespass}~~privacy violation to include ~~{a trespass to}~~the capture of data, information, or characteristics of property for which the

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owner has an expectation of privacy;

- ▶ allows a court to order the removal of any data captured during a criminal trespass; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~§76-6-206~~ §76-9-402, as last amended by Laws of Utah ~~2022~~ 2017, Chapter ~~87~~ 364

Be it enacted by the Legislature of the state of Utah:

Section 1. Section ~~§76-6-206~~ §76-9-402 is amended to read:

~~§76-6-206~~ §76-9-402. ~~§Criminal trespass~~ §Privacy violation.

(1) (a) As used in this section ~~§~~:

~~§(i) (A) §~~, ~~§Advanced~~ advanced technological instrumentality" means a technological instrument that is capable of detecting, observing, measuring, mapping, or otherwise capturing information or data pertaining to natural or man-made characteristics or features of property that are below the surface of the ground or not otherwise readily apparent through natural observation.

~~§(B) b~~ "Advanced technological instrumentality" includes lidar technology.

~~§(2) (a) §~~ ~~(ii)~~ "Enter" means intrusion of the entire body or the entire unmanned aircraft.

~~§(b) (iii)~~ "Remain unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

~~§(i) (A)~~ the private property or any portion of the private property is not open to the public; and

~~§(ii) (B)~~ the person operating the unmanned aircraft is not otherwise authorized to fly the unmanned aircraft over the private property or any portion of the private property.

~~§(b) §~~ A property owner has an expectation of privacy regarding characteristics, data, or

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information pertaining to the owner's property that:

(i) is not immediately apparent through routine visual observation of the property; and

(ii) requires advanced technological instrumentality to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property.

~~[(2)]~~ (3) A person is guilty of ~~criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:~~

~~—— (a) the person enters or remains unlawfully on or causes an unmanned aircraft to enter and remain unlawfully over property and:~~

~~—— (i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;~~

~~—— (ii) intends to commit any crime, other than theft or a felony; or~~

~~—— (iii) is reckless as to whether the person's or unmanned aircraft's presence will cause fear for the safety of another;~~

~~—— (b) knowing the person's or unmanned aircraft's entry or presence is unlawful, the person enters or remains on or causes an unmanned aircraft to enter or remain unlawfully over property to which notice against entering is given by:~~

~~—— (i) personal communication to the person by the owner or someone with apparent authority to act for the owner;~~

~~—— (ii) fencing or other enclosure obviously designed to exclude intruders; or~~

~~—— (iii) posting of signs reasonably likely to come to the attention of intruders; [or]~~

~~—— (c) the person} privacy violation if, except as authorized by law, the person:~~

(a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place;

(b) installs, or uses after unauthorized installation in a private place, without the consent of the person or persons entitled to privacy in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the private place; [or]

(c) installs or uses outside of a private place a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible, or comprehensible outside the private place,

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without the consent of the person or persons entitled to privacy in the private place[-]; or

(d) uses advanced technological instrumentality{, regardless of the person's location,} to detect, observe, measure, map, or otherwise capture information or data about the property or characteristics of the property of another for which the property owner has an expectation of privacy as described in Subsection (~~{1}~~)(b), and to which notice against such an intrusion is given by:

—— (i) personal communication to the person by the owner or someone with apparent authority to act for the owner;

—— (ii) fencing or other enclosure obviously designed to exclude intruders; or

—— (iii) posting of signs reasonably likely to come to the attention of intruders; or

—— [~~(c)~~] (d) the person enters a condominium unit in violation of Subsection 57-8-7(8);

—— (3) (a) A violation of Subsection (2)(a) [or (b)], (b), or (c) is a class B misdemeanor unless the violation is committed in a dwelling, in which event the violation is a class A misdemeanor;

—— (b) A violation of Subsection [~~(2)(c)~~] (2)(d) is an infraction;

—— (4) It is a defense to prosecution under this section that:

—— (a) the property was at the time open to the public; and

—— (b) the actor complied with all lawful conditions imposed on access to or remaining on the property{2}.

[~~(2)~~] (4) A person is not guilty of a violation of this section if:

(a) the device used is an unmanned aircraft;

(b) the person is operating the unmanned aircraft for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and

(c) any conduct described in Subsection [~~(1)~~] (3) that occurs via the unmanned aircraft is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

(5) For a person who commits a violation of Subsection (~~{2}~~3), a court may order the person to remove and destroy any data collected by the person in the commission of the violation of Subsection (~~{2}~~3).

[~~(5)~~] (6) In addition to an order for restitution under Section 77-38b-205, a person who commits a violation of Subsection (2) may also be liable for:

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~~— (a) statutory damages in the amount of three times the value of damages resulting from the violation of Subsection (2) or \$500, whichever is greater; and~~

~~— (b) reasonable attorney fees not to exceed \$250, and court costs.~~

~~— [(6)] (7) Civil damages under Subsection [(5)] (6) may be collected in a separate action by the property owner or the owner's assignee.~~

~~3] (6) Privacy violation is a class B misdemeanor.~~

~~(7) (a) This section does not apply to lawful practices of:~~

~~(i) a law enforcement agency; or~~

~~(ii) another government entity.~~

~~(b) Subsection (3)(d) does not apply to a land surveyor if:~~

~~(i) the land surveyor is performing a survey service in good faith pursuant to a bona fide contract; and~~

~~(ii) for any data pertaining to property not owned by a party to the contract described in Subsection (7)(b)(i) that is captured incidentally by the land surveyor, the land surveyor:~~

~~(A) does not share, publish, sell, or distribute any incidentally captured data pertaining to property that is not relevant to the contract described in Subsection (7)(b)(i); and~~

~~(B) immediately deletes or destroys any data pertaining to property that is not relevant to the contract described in Subsection (7)(b)(i).~~