

SB0219S01 compared with SB0219

~~deleted text~~ shows text that was in SB0219 but was deleted in SB0219S01.

inserted text shows text that was not in SB0219 but was inserted into SB0219S01.

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Senator Ronald M. Winterton proposes the following substitute bill:

CRIMINAL TRESPASS AND PRIVACY 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 to include a trespass to capture 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 to include a trespass to capture data, information, or characteristics of property for which the owner has an expectation of

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privacy;

- ▶ allows a court to order the removal of any data captured during a criminal trespass;
- ▶ provides an exemption for certain law enforcement and government practices; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-6-206, as last amended by Laws of Utah 2022, Chapter 87

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

Section 1. Section **76-6-206** is amended to read:

76-6-206. Criminal trespass.

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

(i) (A) "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) "Advanced technological instrumentality" includes lidar technology.

~~(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:

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

~~(+)~~ (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 information pertaining to the owner's property that:

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

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(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) ~~[A person is guilty of]~~ An actor commits 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]~~ actor 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]~~ actor's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the ~~[person's]~~ actor's or unmanned aircraft's entry or presence is unlawful, the ~~[person]~~ actor 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]~~ actor 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}~~actor uses advanced technological instrumentality, regardless of the ~~{person's}~~actor'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 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}~~actor 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]~~ actor enters a condominium unit in violation of Subsection 57-8-7(8).

~~{(3)(a) A}~~ (3) This section does not apply to lawful practices of:

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(a) a law enforcement agency; or

(b) another government entity.

~~[(3)] (4) (a) [A] Except as provided in Subsection (4)(b), 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) If a violation of Subsections (2)(a), (b), or (c) is committed in a dwelling, the violation is a class A misdemeanor.

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

~~[(4)] (5)~~ 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]~~ defendant complied with all lawful conditions imposed on access to or remaining on the property.

~~[(5)] (6)~~ For a person who commits a violation of Subsection (2), 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).

~~[(5)] (6)]~~ ~~[(6)] (7)~~ In addition to an order for restitution under Section 77-38b-205, ~~[a person]~~ an actor who commits a violation of Subsection (2) may also be liable for:

(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)]~~ ~~[(7)] (8)~~ Civil damages under Subsection ~~[(5)]~~ ~~[(6)]~~ ~~[(7)]~~ may be collected in a separate action by the property owner or the owner's assignee.