A BILL FOR AN ACT

CONCERNING PRIVACY IN REGARD TO EMERGING TECHNOLOGIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

A person commits the crime of first degree criminal trespass if he or she is not a peace officer or other agent of a state or local government agency acting in his or her official capacity and he or she knowingly and intentionally uses an unmanned aerial vehicle (UAV) to observe, record, transmit, or capture images of another person when the other person has a reasonable expectation of privacy.

A person commits harassment if he or she is not a peace officer or other agent of a state or local government agency acting in his or her
official capacity and, with intent to harass, annoy, or alarm another person, he or she uses a UAV to track a person's movements in or about a public place without the person's authorization.

The bill amends existing law concerning the retention of passive surveillance records by government agencies to contemplate the retention of records that are obtained through the use of UAVs.

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Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 13-21-128 as follows:

13-21-128. Civil damages for invasion of privacy - unauthorized recordings. (1) EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, A PERSON WHO SUFFERS DAMAGES AS A RESULT OF ANOTHER PERSON KNOWINGLY AND INTENTIONALLY CAPTURING, WITHOUT THE PERSON'S CONSENT, A PHOTOGRAPH, SOUND RECORDING, OR OTHER PHYSICAL IMPRESSION OR DIGITAL IMAGE OF THE PERSON UNDER CIRCUMSTANCES IN WHICH THE PERSON HAD A REASONABLE EXPECTATION OF PRIVACY HAS A PRIVATE CIVIL RIGHT OF ACTION AGAINST THE PERPETRATOR, REGARDLESS OF WHETHER THE PERPETRATOR IS CONVICTED OF ANY CRIMINAL OFFENSE.

(2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY IF THE PERSON WHO CAPTURES THE PHOTOGRAPH, SOUND RECORDING, OR OTHER PHYSICAL IMPRESSION OR DIGITAL IMAGE WAS A PEACE OFFICER OR AN EMPLOYEE OR OTHER AGENT OF A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY ACTING IN HIS OR HER OFFICIAL CAPACITY, CONSISTENT WITH THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES OTHERWISE, "DAMAGES" DO NOT INCLUDE THE VALUE OR POTENTIAL
VALUE OF A CIVIL JUDGMENT WHEN:

(a) A PERSON CAPTURES A PHOTOGRAPH, SOUND RECORDING, OR OTHER PHYSICAL IMPRESSION OR DIGITAL IMAGE OF ANOTHER PERSON WHO IS A PARTY TO A CIVIL CASE; AND

(b) THE PHOTOGRAPH, SOUND RECORDING, OR OTHER PHYSICAL IMPRESSION OR DIGITAL IMAGE IS GERMANE TO THE CIVIL CASE.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.