

Calif. Gov Signs Privacy Bill To Block Drone Snooping

By **Daniel Siegal**

Law360, Los Angeles (October 01, 2014, 7:23 PM ET) -- California Gov. Jerry Brown on Tuesday signed a bill to expand the state's privacy protections for residents by making it illegal to use "any device" — including drones — to record personal or familial activities on an individual's property.

The law amends California Civil Code Section 1708.8, the state law relating to privacy, which distinguishes between "physical" invasion of privacy, where a person trespasses onto another individual's property to capture an image or sound recording of a person in a personal or familial activity, and "constructive" invasion of privacy, where the snooping is done from outside of the property through the use of a "visual or auditory enhancing device."

Under the measure, Assembly Bill 2306, which the state Legislature adopted at the end of August, that definition is amended to make it illegal to use "any device" to record audio, images or video.

The bill, which was written by Assemblyman Ed Chau, D-Monterey Park, is meant to provide legal recourse for California residents who are recorded on their own property with new technology, such as remote-control drones bearing audio or visual recording devices, that would not qualify as a "visual or auditory enhancing device" according to a statement Tuesday by Chau.

"As technology continues to advance and new robotic-like devices become more affordable for the general public, the possibility of an individual's privacy being invaded substantially increases," Chau said. "I applaud the governor for signing A.B. 2306, because it will ensure that our state's invasion of privacy statute remains relevant even as technology continues to evolve."

The bill ensures that new technologies are covered by the law, as the previous definition was based on a term not defined in existing law, and will make sure the law is based less on specific technology and more on the intrusive conduct it is meant to prevent, according to Chau.

Reece Hirsch, a co-head of Morgan Lewis & Bockius LLP's privacy and cybersecurity practice, told Law360 on Wednesday that this intent reflects a growing trend in privacy law to craft legislation that is "technology neutral," as opposed to tailored to block specific devices or techniques, as otherwise technological innovation can soon outpace the regulation. Hirsch said the law comes as paparazzi have taken to using drones, helicopters and other technologies to snoop on celebrities.

"I think clearly the change to 'any device' is intended to address camera-bearing drones and ... could apply to any number of surveillance technologies," he said. "The law is probably worded broadly enough

to catch all of those uses of technology including those we haven't thought of yet, or that haven't been invented yet."

Gov. Brown signed the bill days after he vetoed a bill that would have required law enforcement agencies to obtain warrants to use drones, a defeat for lawmakers who had raised concerns that drones could threaten privacy rights.

The veto of Assembly Bill 1327, which received widespread bipartisan support in the Legislature, comes after opposition from law enforcement groups, such as the California Police Chiefs Association.

Brown said that while there are circumstances where a warrant is appropriate, the bill's restrictions on law enforcement agencies' drone use went too far.

--Additional reporting by Emily Field. Editing by Mark Lebetkin.