

By: Gooden, Riddle, Burnam, Fallon,
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H.B. No. 912

Substitute the following for H.B. No. 912:

By: Herrero

C.S.H.B. No. 912

A BILL TO BE ENTITLED

AN ACT

relating to images captured by unmanned vehicles and unmanned
aircraft; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Texas Privacy Act.

SECTION 2. Subtitle B, Title 4, Government Code, is amended
by adding Chapter 423 to read as follows:

CHAPTER 423. USE OF UNMANNED VEHICLES AND UNMANNED AIRCRAFT

Sec. 423.001. DEFINITION. In this chapter, "image" means
any capturing of sound waves, thermal, infrared, ultraviolet,
visible light, or other electromagnetic waves, odor, or other
conditions existing on or about real property or an individual
located on that property.

Sec. 423.002. NONAPPLICABILITY. This chapter does not
apply to an image of real property or an individual on real property
located in this state that is captured by an unmanned vehicle or
unmanned aircraft operated in this state:

(1) for purposes of professional or scholarly research
and development by a person acting on behalf of an institution of
higher education, as defined by Section 61.003, Education Code,
including a person who:

(A) is a professor, employee, or student of the
institution; or

(B) is under contract with or otherwise acting

1 under the direction or on behalf of the institution; or

2 (2) airspace designated as a test site or range
3 authorized by the Federal Aviation Administration for the purpose
4 of integrating unmanned aircraft systems into the national
5 airspace; or

6 (3) an operation, exercise, or mission of any branch
7 of the United States military.

8 Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR
9 UNMANNED AIRCRAFT TO CAPTURE IMAGE. (a) A person commits an offense
10 if the person uses or authorizes the use of an unmanned vehicle or
11 unmanned aircraft to capture an image of an individual or real
12 property with the intent to monitor or conduct surveillance on the
13 individual or the real property captured in the image.

14 (b) An offense under this section is a Class C misdemeanor.

15 (c) It is an exception to the application of this section
16 that the image was captured:

17 (1) with the consent of the individual captured in the
18 image and the individual who owns or lawfully occupies the real
19 property captured in the image;

20 (2) pursuant to a valid search or arrest warrant;

21 (3) by a law enforcement authority:

22 (A) in immediate pursuit of a person law
23 enforcement officers have probable cause to suspect has committed a
24 felony;

25 (B) for the purpose of documenting a crime scene
26 where a felony has been committed;

27 (C) for the purpose of investigating the scene of

- 1 a human fatality or suspected human fatality;
2 (D) in connection with the search for a missing
3 person; or
4 (E) for the purpose of resolving a hostage
5 situation;
6 (4) by state authorities for the purpose of:
7 (A) surveying the scene of a catastrophe or other
8 damage to determine whether a state of emergency should be
9 declared; or
10 (B) preserving public safety, protecting
11 property, or surveying damage or contamination during a lawfully
12 declared state of emergency;
13 (5) at the scene of a spill, or a suspected spill, of
14 hazardous materials;
15 (6) for the purpose of fire suppression;
16 (7) for the purpose of rescuing a person whose life or
17 well-being is in imminent danger;
18 (8) by a Texas licensed real estate broker in
19 connection with the marketing, sale, or financing of real property,
20 provided that no individual is identifiable in the image;
21 (9) of real property or a person on real property that
22 is within 25 miles of the United States border;
23 (10) from a height no more than eight feet above ground
24 level in a public place, if the image was captured without using any
25 electronic, mechanical, or other means to amplify the image beyond
26 normal human perception;
27 (11) of public real property or a person on that

1 property; or

2 (12) with an optical resolution no greater than 40
3 inches per pixel.

4 (d) It is a defense to prosecution under this section that
5 the person destroyed the image:

6 (1) as soon as the person had knowledge that the image
7 was captured in violation of this section; and

8 (2) without disclosing, displaying, or distributing
9 the image to a third party.

10 Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY,
11 DISTRIBUTION, OR USE OF IMAGE. (a) A person commits an offense if
12 the person possesses, discloses, displays, distributes, or
13 otherwise uses an image that was captured in violation of Section
14 423.003.

15 (b) An offense under this section for the possession of an
16 image is a Class C misdemeanor. An offense under this section for
17 the disclosure, display, distribution, or other use of an image is a
18 Class B misdemeanor.

19 (c) Each image a person possesses, discloses, displays,
20 distributes, or otherwise uses in violation of this section is a
21 separate offense.

22 (d) It is a defense to prosecution under this section for
23 the possession of an image that the person destroyed the image as
24 soon as the person had knowledge that the image was captured in
25 violation of Section 423.003.

26 (e) It is a defense to prosecution under this section for
27 the disclosure, display, distribution, or other use of an image

1 that the person stopped disclosing, displaying, distributing, or
2 otherwise using the image as soon as the person had knowledge that
3 the image was captured in violation of Section 423.003.

4 Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT
5 SUBJECT TO DISCLOSURE. (a) Except as otherwise provided by
6 Subsection (b), an image captured in violation of Section 423.003,
7 or an image captured by an unmanned vehicle or unmanned aircraft
8 that was incidental to the lawful capturing of an image:

9 (1) may not be used as evidence in any criminal or
10 juvenile proceeding, civil action, or administrative proceeding;

11 (2) is not subject to disclosure, inspection, or
12 copying under Chapter 552; and

13 (3) is not subject to discovery, subpoena, or other
14 means of legal compulsion for its release.

15 (b) An image described by Subsection (a) may be disclosed
16 and used as evidence to prove a violation of this chapter and is
17 subject to discovery, subpoena, or other means of legal compulsion
18 for that purpose.

19 Sec. 423.006. CIVIL ACTION. (a) An individual who is, or an
20 individual who owns or legally occupies real property that is, the
21 subject of an image captured, possessed, disclosed, displayed,
22 distributed, or otherwise used in violation of this chapter may
23 bring an action to:

24 (1) enjoin a violation or imminent violation of
25 Section 423.003 or 423.004; and

26 (2) recover a civil penalty in accordance with
27 Subsections (b) and (c).

1 (b) A person who violates Section 423.003 or 423.004 is
2 liable for a civil penalty totaling not more than \$3,000 for each
3 still image or \$300 for each second of a moving image, regardless of
4 the number of violations with respect to that still image or moving
5 image or the number of individuals or properties captured in the
6 still image or moving image.

7 (c) A single plaintiff may not recover more than \$1,000 for
8 each still image or more than \$100 for each second of a moving image
9 of the plaintiff or the real property owned or legally occupied by
10 the plaintiff, and may not recover more than a total of \$50,000 for
11 all still images and moving images of the plaintiff and the real
12 property owned or legally occupied by the plaintiff captured in a
13 single occurrence.

14 (d) In addition to any civil penalties authorized under this
15 section, the court shall award court costs and reasonable
16 attorney's fees to the prevailing party.

17 (e) Venue for an action under this section is governed by
18 Chapter 15, Civil Practice and Remedies Code.

19 (f) An action brought under this section alleging a
20 violation of Section 423.003 must be commenced within two years
21 from the date the image was captured in violation of that section.
22 An action brought under this section alleging a violation of
23 Section 423.004 must be commenced within two years from the date the
24 image was first possessed, disclosed, displayed, distributed, or
25 otherwise used in violation of that section.

26 SECTION 3. The change in law made by this Act applies only
27 to the capture, possession, disclosure, display, distribution, or

1 other use of an image that occurs on or after the effective date of
2 this Act.

3 SECTION 4. The provisions of this Act or the applications of
4 those provisions are severable as provided by Section 311.032(c),
5 Government Code.

6 SECTION 5. This Act takes effect September 1, 2013.