

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/25/2013

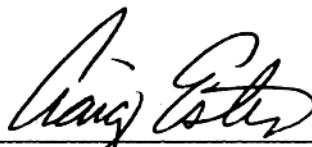
Date

Honorable David Dewhurst  
President of the Senate

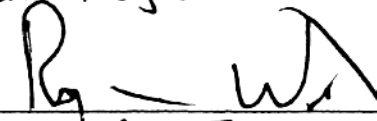
Honorable Joe Straus  
Speaker of the House of Representatives


Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H.B. 912 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

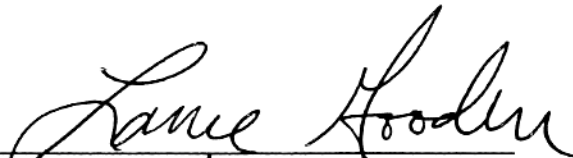
  
Sen. ESTES, chair

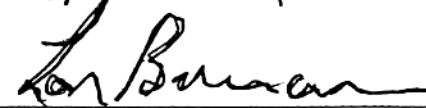
Sen. Hegar

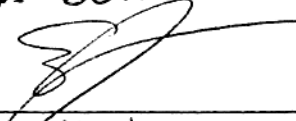
  
Sen. West

  
Sen. Ellis

On the part of the Senate  
Sen. Duncan

  
Rep. Gooden, chair

  
Rep. Burnam

  
Rep. Johnson

Rep. Moody

On the part of the House  
Rep. Stickland

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 912

A BILL TO BE ENTITLED

AN ACT

relating to images captured by unmanned aircraft and other images and recordings; 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 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 in this state or an individual located on that property.

Sec. 423.002. NONAPPLICABILITY. (a) It is lawful to capture an image by an unmanned aircraft 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

under the direction or on behalf of the institution;

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

(3) as part of an operation, exercise, or mission of any branch of the United States military;

(4) by a satellite for the purposes of mapping;

(5) by or for an electric or natural gas utility:

(A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;

(B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;

(C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and

(D) for utility facility routing and siting for the purpose of providing utility service;

(6) with the consent of the individual who owns or lawfully occupies the real property captured in the image;

(7) pursuant to a valid search or arrest warrant;

(8) by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority;

(A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only;

(B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed;

(C) for the purpose of investigating the scene of:  
(i) a human fatality;  
(ii) a motor vehicle accident causing death or serious bodily injury to a person; or  
(iii) any motor vehicle accident on a state highway or federal interstate or highway;

(D) in connection with the search for a missing person;

(E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or

(F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities;

(9) by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be

declared;

(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or

(C) conducting routine air quality sampling and monitoring, as provided by state or local law;

(10) at the scene of a spill, or a suspected spill, of hazardous materials;

(11) for the purpose of fire suppression;

(12) for the purpose of rescuing a person whose life or well-being is in imminent danger;

(13) by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;

(14) of real property or a person on real property that is within 25 miles of the United States border;

(15) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;

(16) of public real property or a person on that property;

(17) by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, if the image is

H.B. No. 912  
captured without the intent to conduct surveillance on an  
individual or real property located in this state;

(18) in connection with oil pipeline safety and rig  
protection;

(19) in connection with port authority surveillance and  
security;

(b) This chapter does not apply to the manufacture, assembly,  
distribution, or sale of an unmanned aircraft.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED AIRCRAFT TO  
CAPTURE IMAGE. (a) A person commits an offense if the person uses  
an unmanned aircraft to capture an image of an individual or  
privately owned real property in this state with the intent to  
conduct surveillance on the individual or property captured in the  
image.

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

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

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

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

(d) In this section, "intent" has the meaning assigned by  
Section 6.03, Penal Code.

Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY,  
DISTRIBUTION, OR USE OF IMAGE. (a) A person commits an offense if

the person:

(1) captures an image in violation of Section 423.003;

and

(2) possesses, discloses, displays, distributes, or otherwise uses that image.

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

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

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

(e) It is a defense to prosecution under this section for the disclosure, display, distribution, or other use of an image that the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as the person had knowledge that the image was captured in violation of Section 423.003.

Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE. (a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.003, or an image captured by an unmanned aircraft that was incidental to

the lawful capturing of an image:

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

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

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

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

Sec. 423.006. CIVIL ACTION. (a) An owner or tenant of privately owned real property located in this state may bring against a person who, in violation of Section 423.003, captured an image of the property or the owner or tenant while on the property an action to:

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

(2) recover a civil penalty of:

(A) \$5,000 for all images captured in a single episode in violation of Section 423.003; or

(B) \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode in violation of Section 423.004; or

(3) recover actual damages if the person who captured



H.B. No. 912  
the image in violation of Section 423.003 discloses, displays, or distributes the image with malice.

(b) For purposes of recovering the civil penalty or actual damages under Subsection (a), all owners of a parcel of real property are considered to be a single owner and all tenants of a parcel of real property are considered to be a single tenant.

(c) In this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

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

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

(f) An action brought under this section must be commenced within two years from the date the image was:

(1) captured in violation of Section 423.003; or

(2) initially disclosed, displayed, distributed, or otherwise used in violation of Section 423.004.

Sec. 423.007. RULES FOR USE BY LAW ENFORCEMENT. The Department of Public Safety shall adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

Sec. 423.008. REPORTING BY LAW ENFORCEMENT AGENCY. (a) No earlier than January 1 and no later than January 15 of each odd-numbered year, a municipal or county law enforcement agency located

H.B. No. 912  
in a city or county with a population greater than 150,000, or a  
state law enforcement agency, that used or operated an unmanned  
aircraft during the preceding 24 months shall issue a written  
report to each member of the Texas Legislature, including the  
Governor and Lieutenant Governor, retain the report for public  
viewing and post the report on the law enforcement agency's  
publicly accessible website, if one exists. The report shall  
contain:

(a) the number of times an unmanned aircraft was operated,  
organized by date, time, location, types of incidents, and the  
types of justification for operation;

(b) the number of criminal investigations aided by the  
operation of an unmanned aircraft and a description of how the  
unmanned aircraft aided each investigation;

(c) the date, location, and number of times an unmanned  
aircraft was operated for reasons other than a criminal  
investigation and a description of how the unmanned aircraft aided  
each operation;

(d) the frequency and type of information collected on an  
individual, residence, property or area that was not the subject of  
an operation; and

(e) the total cost of acquisition, maintenance, repair, and  
operation the unmanned aircraft or unmanned aircrafts for the  
preceding 24 months.

SECTION 3. The change in law made by this Act applies only to

H.B. No. 912  
the capture, possession, disclosure, display, distribution, or  
other use of an image that occurs on or after the effective date of  
this Act.

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

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

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

*No equivalent provision.*

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION \_\_. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 112 to read as follows:  
CHAPTER 112. LIABILITY OF GOVERNMENTAL UNIT FOR CERTAIN UNSUCCESSFUL PROSECUTIONS  
Sec. 112.001. DEFINITION. In this chapter, "governmental unit" has the meaning assigned by Section 101.001.  
Sec. 112.002. LIABILITY FOR CERTAIN RETALIATORY PROSECUTIONS. A person who is prosecuted for an offense under Section 22.01(a)(1) or 38.15(a)(1), Penal Code, or Section 542.501(a)(1), Transportation Code, and is acquitted of the offense may recover in a civil action against the governmental unit that employed any peace officer who accused the person of the offense of which the person was acquitted if the person shows by a preponderance of the evidence that:  
(1) the person was filming, recording, photographing, documenting, or observing the peace officer; and  
(2) the peace officer's accusation was made in retaliation for the person's act of filming, recording, photographing, documenting, or observing the peace officer.  
Sec. 112.003. REMEDIES. A person who prevails in a suit against a governmental unit under Section 112.002 is entitled to recover only:  
(1) the person's reasonable attorney's fees incurred in connection with the retaliatory prosecution; and  
(2) the amount of any actual damages incurred by the person arising from damage by a peace officer to any recording equipment used in connection with the conduct that resulted in

CONFERENCE

SECTION 1. Same as House version.

Same as House version.

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

the retaliatory prosecution.

Sec. 112.004. SOVEREIGN IMMUNITY WAIVED.  
Sovereign immunity to suit and liability is waived and  
abolished to the extent of liability created by this chapter.  
[FA4]

*No equivalent provision.*

SECTION \_\_. Chapter 112, Civil Practice and Remedies Code, as added by this Act, applies only with respect to a prosecution of an offense committed on or after the effective date of this Act. [FA4]

Same as House version.

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

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

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

CHAPTER 423. USE OF UNMANNED AIRCRAFT  
[FA1(1)]

CHAPTER 423. USE OF 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 in this state or an  
individual located on that property.

Same as House version.

Same as House version.

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.*

Sec. 423.002. NONAPPLICABILITY. *This chapter does*  
*not apply to an image that is captured by an unmanned*  
*aircraft operated in this state.* [FA1(2);FA2(1)]

Sec. 423.002. NONAPPLICABILITY. *(a) It is lawful to*  
*capture an image by an unmanned aircraft 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

(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

(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

House Bill 912  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

Code, including a person who:

- (A) is a professor, employee, or student of the institution; or
- (B) is under contract with or otherwise acting under the direction or on behalf of the institution;
- (2) in airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace;
- (3) as part of an operation, exercise, or mission of any branch of the United States military;
- (4) if the image is taken by a satellite for the purpose of mapping;*
- (5) by a manufacturer or distributor of the unmanned vehicle or unmanned aircraft in connection with the development, manufacture, testing, or research of the vehicle or the aircraft;*
- (6) by a manufacturer or distributor incidental to the activities authorized under Subdivision (5) and the manufacturer or distributor discloses the image voluntarily to law enforcement because the manufacturer or distributor reasonably believes the image shows the commission of an offense; or*
- (7) by or for an electric or natural gas utility:
  - (A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;
  - (B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;
  - (C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and
  - (D) for utility facility routing and siting for the purpose of providing utility service.

SENATE VERSION (IE)

Code, including a person who:

- (A) is a professor, employee, or student of the institution; or
- (B) is under contract with or otherwise acting under the direction or on behalf of the institution;
- (2) in airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace;
- (3) as part of an operation, exercise, or mission of any branch of the United States military;
- (4) if the image is taken by a satellite for the purpose of mapping;*
- (5) by a manufacturer or distributor of the unmanned aircraft in connection with the development, manufacture, testing, or research of the aircraft; [FA1(3)-(4)]*
- (6) by a manufacturer or distributor incidental to the activities authorized under Subdivision (5) and the manufacturer or distributor discloses the image voluntarily to law enforcement because the manufacturer or distributor reasonably believes the image shows the commission of an offense; [FA2(3)]*
- (7) by or for an electric or natural gas utility:
  - (A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;
  - (B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;
  - (C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and
  - (D) for utility facility routing and siting for the purpose of providing utility service;

CONFERENCE

Code, including a person who:

- (A) is a professor, employee, or student of the institution; or
- (B) is under contract with or otherwise acting under the direction or on behalf of the institution;
- (2) in airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace;
- (3) as part of an operation, exercise, or mission of any branch of the United States military;
- (4) by a satellite for the purposes of mapping;*
- No equivalent provision.
- No equivalent provision.
- (5) by or for an electric or natural gas utility:*
  - (A) for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity;*
  - (B) for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;*
  - (C) for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and*
  - (D) for utility facility routing and siting for the purpose of providing utility service;*

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

*[Compare to Sec. 423.003(c), Government Code, below.]*

SENATE VERSION (IE)

(8) with the consent of the individual ***captured in the image and the individual who owns or lawfully occupies the real property captured in the image;***

(9) pursuant to a valid search or arrest warrant;

(10) by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority;

(A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense;

(B) for the purpose of documenting a crime scene where an offense has been committed;

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

(i) a human fatality;

(ii) a motor vehicle accident causing death or serious bodily injury to a person; or

(iii) any motor vehicle accident on a state highway or federal interstate or highway; [FA2(4)]

(D) in connection with the search for a missing person; [FA2(4),FA3(1)]

**(E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or [FA2(4)]**

(F) of private property that is generally open to the public ***and for which law enforcement has public safety responsibilities;*** [FA2(4),FA3(2)]

(11) by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

CONFERENCE

(6) with the consent of the individual ***who owns or lawfully occupies the real property captured in the image;***

(7) pursuant to a valid search or arrest warrant;

(8) by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority;

(A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, ***not including misdemeanors or offenses punishable by a fine only;***

(B) for the purpose of documenting a crime scene where an offense, ***not including misdemeanors or offenses punishable by a fine only,*** has been committed;

(C) - (E) Same as Senate version.

(F) of private property that is generally open to the public ***where the property owner consents to law enforcement public safety responsibilities;***

(9) by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;  
(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or  
(C) conducting routine air quality sampling and monitoring;

(12) at the scene of a spill, or a suspected spill, of hazardous materials;

(13) for the purpose of fire suppression;

(14) for the purpose of rescuing a person whose life or well-being is in imminent danger;

(15) by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;

(16) of real property or a person on real property that is within 25 miles of the United States border;

(17) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;

(18) of public real property or a person on that property;

(19) by an electric or telecommunications utility provider regulated by the Public Utility Commission of Texas;

(A) for the purpose of performing and reporting the results of the annual inspection of transmission lines and other facilities as required by the commission, if the image is captured without the intent to conduct surveillance on an individual or real property located in this state; or

(B) for the purpose of maintaining or repairing transmission lines or other facilities, if the image is captured without the

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;  
(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or  
(C) conducting routine air quality sampling and monitoring, as provided by state or local law;

(10) at the scene of a spill, or a suspected spill, of hazardous materials;

(11) for the purpose of fire suppression;

(12) for the purpose of rescuing a person whose life or well-being is in imminent danger;

(13) by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;

(14) of real property or a person on real property that is within 25 miles of the United States border;

(15) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;

(16) of public real property or a person on that property;

No equivalent provision.



House Bill 912  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

intent to conduct surveillance on an individual or real property located in this state;

(20) by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, if the image is captured without the intent to conduct surveillance on an individual or real property located in this state;

(21) in connection with oil pipeline safety and rig protection;

(22) in connection with port authority surveillance and security;

(23) in connection with cattle ranching or agriculture and wildlife management;

(24) in connection with oil and gas exploration;

(25) for the purpose of water supply safety;

(26) for the purpose of surveying land;

(27) for the purpose of agriculture and farming safety;

(28) in connection with an air show or related event;

(29) for the purpose of producing a film or other artistic work incorporating a visual or aural image, if: [FA2(4)]

(A) any identifiable person captured in the image was not in a place where that person had a reasonable expectation of privacy, the image or recording was made in accordance with a permit issued by a state or federal agency, and the unmanned aircraft capturing the image or recording is at least 10 feet in length and affixed with lights or reflective markings indicating the aircraft's owner; or [FA2(4),FA3(3)-(4)]

(B) the image was recorded at an altitude of at least 400 feet;

(30) by a radio or television station licensed by the Federal Communications Commission, a newspaper of general circulation published in Texas, or another bona fide news

(17) by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, if the image is captured without the intent to conduct surveillance on an individual or real property located in this state;

(18) in connection with oil pipeline safety and rig protection;

(19) in connection with port authority surveillance and security;

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

House Bill 912  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

organization if: [FA2(4)]

(A) the image was captured for news-gathering purposes, any identifiable person captured in the image was not in a place where that person had a reasonable expectation of privacy, and the unmanned aircraft capturing the image is at least 10 feet in length and affixed with lights or reflective markings indicating the aircraft's owner; or [FA2(4),FA3(5)-(6)]

(B) the image was recorded at an altitude of at least 400 feet; or [FA2(4)]

(31) in connection with the manufacture, assembly, distribution, or sale of an unmanned aircraft [FA2(4),FA3(7)]

No equivalent provision.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR UNMANNED AIRCRAFT TO CAPTURE IMAGE.

(a) A person commits an offense if the person uses an **unmanned vehicle or** unmanned aircraft to capture an image of:

(1) an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image; or

(2) real property in this state, on which a primary or secondary school or a licensed child-care facility is operated or an individual located on that property, with the intent to

No equivalent provision.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED AIRCRAFT TO CAPTURE IMAGE.

(a) A person commits an offense if the person uses an unmanned aircraft to capture an image of: [FA1(5)-(6)]

(1) an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image; or

(2) real property in this state, on which a primary or secondary school or a licensed child-care facility is operated or an individual located on that property, with the intent to

No equivalent provision.

(b) This chapter does not apply to the manufacture, assembly, distribution, or sale of an unmanned aircraft.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED AIRCRAFT TO CAPTURE IMAGE.

(a) A person commits an offense if the person uses an **unmanned aircraft** to capture an image of **an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image.**

No equivalent provision.

No equivalent provision.

House Bill 912  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

conduct surveillance.

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

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

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

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

(3) by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority;

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

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

(C) for the purpose of investigating the scene of a human fatality or suspected human fatality;

(D) in connection with the search for a missing person; or

(E) for the purpose of resolving a hostage situation;

(4) by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;

(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or

(C) conducting routine air quality sampling and monitoring;

SENATE VERSION (IE)

conduct surveillance.

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

(c) [Deleted by FA2(5)]

[Compare Sec. 423.002, Government Code, above.]

CONFERENCE

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

Same as Senate Version.

House Bill 912  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(5) at the scene of a spill, or a suspected spill, of hazardous materials;  
(6) for the purpose of fire suppression;  
(7) for the purpose of rescuing a person whose life or well-being is in imminent danger;  
(8) by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;  
(9) of real property or a person on real property that is within 25 miles of the United States border;  
(10) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;  
(11) of public real property or a person on that property;  
(12) by an electric or telecommunication utility provider regulated by the Public Utility Commission of Texas:  
(A) for the purpose of performing and reporting the results of the annual inspection of transmission lines and other facilities as required by the commission, if the images are captured without the intent to conduct surveillance on an individual or real property located in this state; or  
(B) for the purpose of maintaining or repairing transmission lines or other facilities, if the images are captured without the intent to conduct surveillance on an individual or real property located in this state;  
(13) by the owner or operator of an oil, gas, water, or other pipeline for the purpose of maintaining or repairing pipelines or other transmission facilities, if the images are captured without the intent to conduct surveillance on an individual or real property located in this state;  
(14) by a satellite for the purpose of mapping, provided that

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

the images are not captured with the intent to conduct surveillance of an individual or real property located in this state;

(15) in connection with oil pipeline safety and rig protection;

(16) in connection with port authority surveillance and security;

(17) in connection with cattle ranching or agriculture and wildlife management;

(18) in connection with oil and gas exploration;

(19) for the purpose of water supply safety;

(20) for the purpose of surveying land;

(21) for the purpose of agriculture and farming safety; or

(22) in connection with an air show or related event.

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

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

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

(e) This chapter does not apply to the manufacture, assembly, distribution, or sale of an unmanned vehicle or unmanned aircraft.

(f) In this section, "intent" has the meaning assigned by Section 6.03, Penal Code.

Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE. (a) A person commits an offense if the person:

SENATE VERSION (IE)

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

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

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

(e) [FA1(7);Deleted by FA2(5)]

(f) In this section, "intent" has the meaning assigned by Section 6.03, Penal Code.

Same as House version.

CONFERENCE

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

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

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

Same as Senate version.

(d) In this section, "intent" has the meaning assigned by Section 6.03, Penal Code.

Same as House version.

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

(1) captures an image in violation of Section 423.003; and  
(2) possesses, discloses, displays, distributes, or otherwise uses that image.

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

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

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

(e) It is a defense to prosecution under this section for the disclosure, display, distribution, or other use of an image that the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as the person had knowledge that the image was captured in violation of Section 423.003.

Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.

(a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.003, or an image captured by an *unmanned vehicle or* unmanned aircraft that was incidental to the lawful capturing of an image:

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

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

(3) is not subject to discovery, subpoena, or other means of

SENATE VERSION (IE)

Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.

(a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.003, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image: [FA1(8)]

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

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

(3) is not subject to discovery, subpoena, or other means of

CONFERENCE

Same as Senate version.

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

legal compulsion for its release.

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

Sec. 423.006. CIVIL ACTION. (a) An owner or tenant of privately owned real property located in this state may bring against a person who, in violation of Section 423.003, captured an image of the property or the owner or tenant while on the property an action to:

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

(2) recover a civil penalty of:

(A) \$5,000 for all images captured in a single episode in violation of Section 423.003; or

(B) \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode in violation of Section 423.004; or

(3) recover actual damages if the person who captured the image in violation of Section 423.003 discloses, displays, or distributes the image with malice.

(b) For purposes of recovering the civil penalty or actual damages under Subsection (a), all owners of a parcel of real property are considered to be a single owner and all tenants of a parcel of real property are considered to be a single tenant.

(c) In this section, "malice" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

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

(e) Venue for an action under this section is governed by

SENATE VERSION (IF)

legal compulsion for its release.

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

Same as House version.

CONFERENCE

Same as House version.

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

Chapter 15, Civil Practice and Remedies Code.

(f) An action brought under this section must be commenced within two years from the date the image was:

(1) captured in violation of Section 423.003; or

(2) initially disclosed, displayed, distributed, or otherwise used in violation of Section 423.004.

Sec. 423.007. RULES FOR USE BY LAW ENFORCEMENT. The Department of Public Safety shall adopt rules and guidelines for use of an **unmanned vehicle or** unmanned aircraft by a law enforcement authority in this state.

No equivalent provision.

SENATE VERSION (IE)

Sec. 423.007. RULES FOR USE BY LAW ENFORCEMENT. The Department of Public Safety shall adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state. [FA1(9)]

No equivalent provision.

CONFERENCE

Same as Senate version.

**Sec. 423.008. REPORTING BY LAW ENFORCEMENT AGENCY. No earlier than January 1 and no later than January 15 of each odd-numbered year, a municipal or county law enforcement agency located in a city or county with a population greater than 150,000, or a state law enforcement agency, that used or operated an unmanned aircraft during the preceding 24 months shall issue a written report to each member of the Texas Legislature, including the Governor and Lieutenant Governor, retain the report for public viewing and post the report on the law enforcement agency's publicly accessible website, if one exists. The report shall contain:**  
(a) the number of times an unmanned aircraft was operated, organized by date, time, location, types of incidents, and the types of justification for operation;  
(b) the number of criminal investigations aided by the operation of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation;  
(c) the date, location, and number of times an unmanned aircraft was operated for reasons other than a criminal



**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

investigation and a description of how the unmanned aircraft aided each operation;  
(d) the frequency and type of information collected on an individual, residence, property or area that was not the subject of an operation; and  
(e) the total cost of acquisition, maintenance, repair, and operation the unmanned aircraft or unmanned aircrafts for the preceding 24 months.

No equivalent provision.

SECTION \_\_. Section 38.15(c), Penal Code, is amended to read as follows:

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant:

(1) was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code; or

(2) consisted only of filming, recording, photographing, documenting, or observing a peace officer. [FA4]

Same as House version.

No equivalent provision.

SECTION \_\_. Section 542.501, Transportation Code, is amended to read as follows:

Sec. 542.501. OBEDIENCE REQUIRED TO POLICE OFFICERS AND TO SCHOOL CROSSING GUARDS. (a)

A person may not wilfully fail or refuse to comply with a lawful order or direction of:

(1) a police officer; or

(2) a school crossing guard who:

(A) is performing crossing guard duties in a school crosswalk to stop and yield to a pedestrian; or

(B) has been trained under Section 600.004 and is directing traffic in a school crossing zone.

Same as House version.

**House Bill 912**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(b) Subsection (a)(1) does not apply to an order or direction to cease filming, recording, photographing, documenting, or observing a police officer while the officer is engaged in the performance of official duties. [FA4]

No equivalent provision.

SECTION \_\_. (a) Except as provided by Subsection (b) of this section, Section 38.15, Penal Code, and Section 542.501, Transportation Code, as amended by this Act, apply to the prosecution of an offense under one of those sections commenced before, on, or after the effective date of this Act.  
(b) A final conviction for an offense under Section 38.15, Penal Code, or Section 542.501, Transportation Code, that exists on the effective date of this Act is unaffected by this Act. [FA4]

Same as House version.

SECTION 3. The change in law made by this Act applies only to the capture, possession, disclosure, display, distribution, or other use of an image that occurs on or after the effective date of this Act.

SECTION 3. Same as House version.

SECTION 3. Same as House version.

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

SECTION 4. Same as House version.

SECTION 4. Same as House version.

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

SECTION 5. Same as House version.

SECTION 5. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 25, 2013**

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB912** by Gooden (Relating to images captured by unmanned aircraft and other images and recordings; providing penalties.), **Conference Committee Report**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would add Chapter 423 to the Government Code to define "image" captured by unmanned aircraft, and would create a class C misdemeanor offense if a person uses an unmanned aircraft to capture an image of a person or privately owned real property captured in the image. The bill would create a Class B misdemeanor for the disclosure, display, distribution or other use of certain related images. The bill would also create defenses to prosecution for images captured under specific circumstances as defined by the provisions of the bill. A Class C misdemeanor is punishable by a fine of not more than \$500. A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and/or a fine not to exceed \$2,000. No significant fiscal impact to the state is anticipated.

The bill would require The Department of Public Safety (DPS) to adopt rules and guidelines for the use of an unmanned aircraft by a law enforcement authority in this state. A municipal or county law enforcement agency located in a city or a county with a population of greater than 150,000, or a state law enforcement agency, that used or operated an unmanned aircraft would be required to issue a written report to each member of the Texas Legislature and retain the report for public viewing and post the report on the entity's website, if one exists, as defined by the provisions of the bill.

This analysis assumes the DPS could implement the provisions of the bill within existing appropriations.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated. Costs associated with enforcement and prosecution could likely be absorbed within existing resources; and revenue gain from fines imposed and collected is not anticipated to have a significant fiscal impact.

**Source Agencies:** 466 Office of Consumer Credit Commissioner

**LBB Staff:** UP, SZ, SD, TP, ESi

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 912 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

Lance Gooden  
(name)

5/25/13  
(date)