

BILL ANALYSIS

Senate Research Center

H.B. 912
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Agriculture, Rural Affairs & Homeland Security
5/13/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 912 amends current law relating to images captured by unmanned vehicles and unmanned aircraft, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 2 (Section 423.007, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as the Texas Privacy Act.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 423, as follows:

CHAPTER 423. USE OF UNMANNED VEHICLES AND UNMANNED AIRCRAFT

Sec. 423.001. DEFINITION. Defines "image" for this chapter.

Sec. 423.002. NONAPPLICABILITY. Provides that 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 (Definitions), Education Code, including a person who is a professor, employee, or student of the institution or 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 for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities; for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and for utility facility routing and siting for the purpose of providing utility service.

Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR UNMANNED AIRCRAFT TO CAPTURE IMAGE. (a) Provides that a person commits an offense if the person uses an unmanned vehicle or 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 or 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 conduct surveillance.

(b) Provides that an offense under this section is a Class C misdemeanor.

(c) Provides that 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 in immediate pursuit of a person law enforcement officers have probable cause to suspect has committed a felony; for the purpose of documenting a crime scene where a felony has been committed; for the purpose of investigating the scene of a human fatality or suspected human fatality; in connection with the search for a missing person; or 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 surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared; preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or conducting routine air quality sampling and monitoring;

(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 (PUC) of Texas for the purpose of performing and reporting the results of the annual inspection of transmission lines and other facilities as required by PUC, if the images are captured without the intent to conduct surveillance on an individual or real property located in this state or 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 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) Provides that it is a defense to prosecution under this section that the person destroyed the image as soon as the person had knowledge that the image was captured in violation of this section and without disclosing, displaying, or distributing the image to a third party.

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

(f) Defines "intent" in this subsection.

Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE. (a) Provides that a person commits an offense if the person captures an image in violation of Section 423.003 and possesses, discloses, displays, distributes, or otherwise uses that image.

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

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

(d) Provides that 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) Provides that 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 INCIDENTALY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.** (a) Provides that, 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) is prohibited from being 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 (Public Information); and

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

(b) Authorizes an image described by Subsection (a) to 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) Authorizes an owner or tenant of privately owned real property located in this state to 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 \$5,000 for all images captured in a single episode in violation of Section 423.003 or \$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) Provides that, 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) Defines "malice" in this subsection.

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

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

(f) Requires that an action brought under this section be commenced within two years from the date the image was captured in violation of Section 423.003 or initially disclosed, displayed, distributed, or otherwise used in violation of Section 423.004.

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

SECTION 3. Provides that 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 4. Provides that the provisions of this Act or the applications of those provisions are severable as provided by Section 311.032(c) (relating to providing that, in a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable), Government Code.

SECTION 5. Effective date: September 1, 2013.