

## **BILL ANALYSIS**

C.S.H.B. 912  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that the Federal Aviation Administration has estimated that there will be more than 30,000 unmanned vehicles and aircraft operating in U.S. airspace by the end of the decade. Due to the rapidly expanding use and imaging capabilities of these vehicles and aircraft, the parties contend that it is necessary for the Texas Legislature to adopt legislation to address the purposes for and manner in which the vehicles and aircraft may be used. C.S.H.B. 912 seeks to establish privacy provisions with respect to unmanned vehicles and unmanned aircraft used to capture images of private property and persons located on that property.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 912 amends the Government Code to make it a Class C misdemeanor to use or authorize the use of an unmanned vehicle or unmanned aircraft to capture an image, defined in the bill to mean 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, of an individual or real property with the intent to monitor or conduct surveillance on the individual or the real property captured in the image. The bill creates an exception to the application of this offense that the image was captured in one of the following circumstances: 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; under a valid search or arrest warrant; by a law enforcement authority for specified purposes; by state authorities for certain emergency response and public safety purposes; at the scene of a hazardous materials spill or suspected spill; for the purpose of fire suppression or rescuing a person whose life is in imminent danger; 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; of real property or a person on real property that is within 25 miles of the United States border; 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; of public real property or a person on that property; or with an optical resolution no greater than 40 inches per pixel. The bill establishes a defense to prosecution for this offense that the person destroyed the image as soon as the person had knowledge that the image was captured in violation of the bill's provisions and without disclosing, displaying, or distributing the image to a third party.

C.S.H.B. 912 makes it an offense to possess, disclose, display, distribute, or otherwise use an image that was captured through the use of an unmanned vehicle or unmanned aircraft in violation of the bill's provisions. The bill makes this offense involving possessing such an image a Class C misdemeanor and makes this offense involving disclosing, displaying, distributing, or otherwise using such an image a Class B misdemeanor. The bill makes each image a person

possesses, discloses, displays, distributes, or otherwise uses in violation of the bill's provisions a separate offense. The bill establishes a defense to prosecution for the possession of such an image that the person destroyed the image as soon as the person had knowledge that the image was captured in violation of the bill's provisions and a defense to prosecution 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 the bill's provisions.

C.S.H.B. 912 prohibits the use as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding of an image captured in violation of the bill's provisions or an image captured by an unmanned vehicle or unmanned aircraft that was incidental to the lawful capturing of an image and exempts such an image from being subject to disclosure, inspection, or copying under state public information law and from being subject to discovery, subpoena, or other means of legal compulsion for its release. The bill authorizes the disclosure and use as evidence of such an image to prove a violation of the bill's provisions and subjects such an image to discovery, subpoena, or other means of legal compulsion for that purpose.

C.S.H.B. 912 authorizes a person who is, or a person who owns or legally occupies real property that is, the subject of an image captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of the bill's provisions to enjoin such a violation or imminent violation and to recover a civil penalty. The bill makes a person who violates the bill's provisions liable for a civil penalty totaling not more than \$3,000 for each still image or \$300 for each second of a moving image, regardless of the number of violations with respect to that still image or moving image or the number of individuals or properties captured in the image. The bill prohibits a single plaintiff from recovering more than \$1,000 for each still image or more than \$100 for each second of a moving image of the plaintiff or the real property owned or legally occupied by the plaintiff and from recovering more than a total of \$50,000 for all still images and moving images of the plaintiff and such real property captured in a single occurrence. The bill requires the court, in addition to any civil penalties authorized by the bill's provisions, to award court costs and reasonable attorney's fees to the prevailing party and establishes that venue for an action under the bill's provisions is governed by Civil Practice and Remedies Code provisions regarding venue. The bill requires an action brought alleging a violation of the bill's provisions to be commenced within two years from the date the image was first captured, possessed, disclosed, displayed, distributed, or otherwise used in such applicable violation.

C.S.H.B. 912 exempts from its provisions an image of real property or an individual on real property located in Texas that is captured by an unmanned vehicle or unmanned aircraft operated in Texas for purposes of professional or scholarly research and development by a person acting on behalf of an institution of higher education; 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; or for an operation, exercise, or mission of any branch of the United States military.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 912 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

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 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.

**No equivalent provision.**

Sec. 423.002. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR AIRCRAFT TO CAPTURE IMAGE. (a) A person commits an offense if the person uses or authorizes the use of an unmanned vehicle or aircraft to capture an image without the express consent of the person who owns or lawfully occupies the real 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 1. Same as introduced version.

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 under the direction or on behalf of the institution; or

(2) 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; or

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

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 or authorizes the use of an unmanned vehicle or unmanned aircraft to capture an image of an individual or real property with the intent to monitor or conduct surveillance on the individual or the real property captured in the image.

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

(c) It is an exception to the application of

section that the image was captured:

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

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

(3) for the purpose of fire suppression or rescuing a person whose life is in imminent danger;

(4) of real property or a person on real property that is within 25 miles of the United States border for the sole purpose of enforcing border laws;

(5) without magnification or other enhancement from no more than six feet above ground level in a public place; or

(6) of public real property or a person on that property.

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:

(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 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; or

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

(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; or

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

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

(1) as soon as the person had knowledge

Sec. 423.003. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE.

(a) A person commits an offense if the person possesses, discloses, displays, distributes, or otherwise uses an image:

(1) that was captured in violation of Section 423.002; or

(2) for any purpose other than a purpose for which there is a defense to prosecution under Section 423.002.

(b) An offense under this section for the possession of an image is a Class C misdemeanor.

(c) Each image a person possesses, discloses, displays, distributes, or otherwise uses in violation of this section is a separate offense. An offense under this section for the disclosure, display, distribution, or other use of an image is a Class B misdemeanor.

(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 423.002.

No equivalent provision.

Sec. 423.004. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT TO DISCLOSURE.

(a) Except as otherwise provided by Subsection (b), an image captured in violation of Section 423.002, or an image captured by an unmanned vehicle or aircraft that was incidental to the capturing of an image for a purpose for which there is a defense to prosecution under Section 423.002:

(1) may not be used as evidence in any

that the image was captured in violation of this section; and

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

Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE OF IMAGE.

(a) A person commits an offense if the person possesses, discloses, displays, distributes, or otherwise uses an image that was captured in violation of Section 423.003.

(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 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. 423.005. CIVIL ACTION. (a) A person who is, or a person who owns or legally occupies real property that is, the subject of an image captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of this chapter may bring an action to:

(1) enjoin a violation or threatened violation of Section 423.002 or 423.003; and

(2) recover a civil penalty.

(b) If it is found in a civil action that a person has violated Section 423.002 or 423.003, the person is liable for:

(1) a civil penalty of \$1,000, subject to adjustment of the dollar amount under Section 423.006, for each image of the plaintiff or of the real property owned or legally occupied by the plaintiff that is captured, possessed, disclosed, displayed, distributed, or otherwise used; and

No equivalent provision.

(2) court costs and reasonable attorney's fees incurred by the plaintiff.

No equivalent provision.

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 individual who is, or an individual who owns or legally occupies real property that is, the subject of an image captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of this chapter may bring an action to:

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

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

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

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

(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.

No equivalent provision.

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

Sec. 423.006. ADJUSTMENT OF AMOUNT OF CIVIL PENALTY. (a) The consumer credit commissioner shall annually compute and publish the dollar amount instead of that specified by Section 423.005(b)(1) to reflect inflation.

(b) In making the computation under Subsection (a), the consumer credit commissioner shall consider the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers and may consider another index adopted by rule of the Finance Commission of Texas.

(c) The consumer credit commissioner shall use 2013 as the base year and adjust the dollar amounts, effective on July 1 of each year.

(d) The consumer credit commissioner shall make available to the public information regarding adjustments made under this section.

No equivalent provision.

No equivalent provision.

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.

No equivalent provision.

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 3. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.