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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 in this state 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;

2 (2) in 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;

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

8 (4) if the image is taken by a satellite for the  
9 purpose of mapping;

10 (5) by a manufacturer or distributor of the unmanned  
11 vehicle or unmanned aircraft in connection with the development,  
12 manufacture, testing, or research of the vehicle or the aircraft;

13 (6) by a manufacturer or distributor incidental to the  
14 activities authorized under Subdivision (5) and the manufacturer or  
15 distributor discloses the image voluntarily to law enforcement  
16 because the manufacturer or distributor reasonably believes the  
17 image shows the commission of an offense; or

18 (7) by or for an electric or natural gas utility:

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

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

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

27 (D) for utility facility routing and siting for

1 the purpose of providing utility service.

2 Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR  
3 UNMANNED AIRCRAFT TO CAPTURE IMAGE. (a) A person commits an  
4 offense if the person uses an unmanned vehicle or unmanned aircraft  
5 to capture an image of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                   (C) conducting routine air quality sampling and  
17 monitoring;

18                   (5) at the scene of a spill, or a suspected spill, of  
19 hazardous materials;

20                   (6) for the purpose of fire suppression;

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

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

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

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

5           (11) of public real property or a person on that  
6 property;

7           (12) by an electric or telecommunication utility  
8 provider regulated by the Public Utility Commission of Texas:

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

14           (B) for the purpose of maintaining or repairing  
15 transmission lines or other facilities, if the images are captured  
16 without the intent to conduct surveillance on an individual or real  
17 property located in this state;

18           (13) by the owner or operator of an oil, gas, water, or  
19 other pipeline for the purpose of maintaining or repairing  
20 pipelines or other transmission facilities, if the images are  
21 captured without the intent to conduct surveillance on an  
22 individual or real property located in this state;

23           (14) by a satellite for the purpose of mapping,  
24 provided that the images are not captured with the intent to conduct  
25 surveillance of an individual or real property located in this  
26 state;

27           (15) in connection with oil pipeline safety and rig

1 protection;

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

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

6 (18) in connection with oil and gas exploration;

7 (19) for the purpose of water supply safety;

8 (20) for the purpose of surveying land;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           Sec. 423.005. ILLEGALLY OR INCIDENTALY CAPTURED IMAGES NOT  
20 SUBJECT TO DISCLOSURE. (a) Except as otherwise provided by  
21 Subsection (b), an image captured in violation of Section 423.003,  
22 or an image captured by an unmanned vehicle or unmanned aircraft  
23 that was incidental to the lawful capturing of an image:

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

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

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

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

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

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

14           (2) recover a civil penalty of:

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

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

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

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

27           (c) In this section, "malice" has the meaning assigned by



1 Section 41.001, Civil Practice and Remedies Code.

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

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

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

9 (1) captured in violation of Section 423.003; or

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

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

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

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

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