

1 AN ACT

2 relating to images captured by unmanned aircraft and other images  
3 and recordings; providing penalties.

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

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

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

8 CHAPTER 423. USE OF UNMANNED AIRCRAFT

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

14 Sec. 423.002. NONAPPLICABILITY. (a) It is lawful to  
15 capture an image using an unmanned aircraft in this state:

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

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

22 (B) is under contract with or otherwise acting  
23 under the direction or on behalf of the institution;

24 (2) in airspace designated as a test site or range

1 authorized by the Federal Aviation Administration for the purpose  
2 of integrating unmanned aircraft systems into the national  
3 airspace;

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

6 (4) if the image is captured by a satellite for the  
7 purposes of mapping;

8 (5) if the image is captured by or for an electric or  
9 natural gas utility:

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

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

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

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

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

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

23 (8) if the image is captured by a law enforcement  
24 authority or a person who is under contract with or otherwise acting  
25 under the direction or on behalf of a law enforcement authority:

26 (A) in immediate pursuit of a person law  
27 enforcement officers have reasonable suspicion or probable cause to

1 suspect has committed an offense, not including misdemeanors or  
2 offenses punishable by a fine only;

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

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

8 (i) a human fatality;

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

11 (iii) any motor vehicle accident on a state  
12 highway or federal interstate or highway;

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

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

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

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

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

27 (B) preserving public safety, protecting

1 property, or surveying damage or contamination during a lawfully  
2 declared state of emergency; or

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

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

7 (11) for the purpose of fire suppression;

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

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

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

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

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

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

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

3           (19) in connection with port authority surveillance  
4 and security.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12           (2) recover a civil penalty of:

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

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

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

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

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

27       (d) In addition to any civil penalties authorized under this

1 section, the court shall award court costs and reasonable  
2 attorney's fees to the prevailing party.

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

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

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

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

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

14 Sec. 423.008. REPORTING BY LAW ENFORCEMENT AGENCY. (a) Not  
15 earlier than January 1 and not later than January 15 of each  
16 odd-numbered year, each state law enforcement agency and each  
17 county or municipal law enforcement agency located in a county or  
18 municipality, as applicable, with a population greater than  
19 150,000, that used or operated an unmanned aircraft during the  
20 preceding 24 months shall issue a written report to the governor,  
21 the lieutenant governor, and each member of the legislature and  
22 shall:

23 (1) retain the report for public viewing; and

24 (2) post the report on the law enforcement agency's  
25 publicly accessible website, if one exists.

26 (b) The report must include:

27 (1) the number of times an unmanned aircraft was used,



1 organized by date, time, location, and the types of incidents and  
2 types of justification for the use;

3 (2) the number of criminal investigations aided by the  
4 use of an unmanned aircraft and a description of how the unmanned  
5 aircraft aided each investigation;

6 (3) the number of times an unmanned aircraft was used  
7 for a law enforcement operation other than a criminal  
8 investigation, the dates and locations of those operations, and a  
9 description of how the unmanned aircraft aided each operation;

10 (4) the type of information collected on an  
11 individual, residence, property, or area that was not the subject  
12 of a law enforcement operation and the frequency of the collection  
13 of this information; and

14 (5) the total cost of acquiring, maintaining,  
15 repairing, and operating or otherwise using each unmanned aircraft  
16 for the preceding 24 months.

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

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

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

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President of the Senate

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Speaker of the House

I certify that H.B. No. 912 was passed by the House on May 10, 2013, by the following vote: Yeas 128, Nays 11, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 912 on May 21, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 912 on May 26, 2013, by the following vote: Yeas 140, Nays 4, 2 present, not voting; and that the House adopted H.C.R. No. 217 authorizing certain corrections in H.B. No. 912 on May 27, 2013, by the following vote: Yeas 145, Nays 3, 2 present, not voting.

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Chief Clerk of the House

H.B. No. 912

I certify that H.B. No. 912 was passed by the Senate, with amendments, on May 17, 2013, by the following vote: Yeas 29, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 912 on May 26, 2013, by the following vote: Yeas 26, Nays 5; and that the Senate adopted H.C.R. No. 217 authorizing certain corrections in H.B. No. 912 on May 27, 2013, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor