

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.

CONFERENCE

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

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No equivalent provision.

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

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]

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]

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

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

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 that is captured by an unmanned aircraft operated in this state: [FA1(2);FA2(1)]

(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

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(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.

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

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(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;

(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;

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- (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:
 - (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

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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 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

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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 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)]

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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 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.

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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 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.]

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(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;
(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

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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 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.

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(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.

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(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:

(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

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

(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:

(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

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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. 423.006. 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.

SENATE VERSION (IE)

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 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.

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- (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 vehicle or unmanned aircraft by a law enforcement authority in this state.

No equivalent provision.

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- (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. [FA1(9)]

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]

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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.

SENATE VERSION (IE)

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.

(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]

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]

SECTION 3. Same as House version.

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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.

SENATE VERSION (IE)

SECTION 4. Same as House version.

SECTION 5. Same as House version.

CONFERENCE