86R28206 JCG-F

By:  Springer H.B. No. 4448

Substitute the following for H.B. No. 4448:

By:  Harless C.S.H.B. No. 4448

A BILL TO BE ENTITLED

AN ACT

relating to the use of unmanned aircraft.

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

SECTION 1.  Section 423.001, Government Code, is amended to read as follows:

Sec. 423.001.  DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1)  "Correctional facility" means:

(A)  a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;

(B)  a municipal or county jail;

(C)  a confinement facility operated by or under contract with the Federal Bureau of Prisons; or

(D)  a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.

(2)  "Critical infrastructure facility" means one of the following, if enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property, are reasonably likely to come to the attention of intruders, and indicate that entry is forbidden:

(A)  a petroleum or alumina refinery;

(B)  an electrical power generating facility, substation, switching station, or electrical control center;

(C)  a chemical, polymer, or rubber manufacturing facility;

(D)  a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E)  a natural gas compressor station;

(F)  a liquid natural gas terminal or storage facility;

(G)  a telecommunications central switching office or any structure used as part of a system to provide wired or wireless telecommunications services;

(H)  a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I)  a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

(J)  a transmission facility used by a federally licensed radio or television station;

(K)  a steelmaking facility that uses an electric arc furnace to make steel;

(L)  a dam that is classified as a high hazard by the Texas Commission on Environmental Quality;

(M)  a concentrated animal feeding operation, as defined by Section 26.048, Water Code;

(N)  any portion of an aboveground oil, gas, or chemical pipeline;

(O)  an oil or gas drilling site;

(P)  a group of tanks used to store crude oil, such as a tank battery;

(Q)  an oil, gas, or chemical production facility;

(R)  an oil or gas wellhead;

(S)  any oil and gas facility that has an active flare;

(T)  an airport, as defined by Section 22.001, Transportation Code, that serves commercial air carriers; or

(U)  a military installation owned or operated by or for the federal government, the state, or another governmental entity.

(3)  "Dam" means any barrier, including any appurtenant structures, that is constructed for the purpose of permanently or temporarily impounding water.

(4)  "Detention facility" means a facility operated by or under contract with United States Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.

(5)  "Image" [~~, "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.

(6)  "Sports venue" means an arena, automobile racetrack, coliseum, stadium, or other type of area or facility that:

(A)  has a seating capacity of 30,000 or more people; and

(B)  is primarily used for one or more professional or amateur sports or athletics events.

SECTION 2.  Section 423.002(a), Government Code, is amended to read as follows:

(a)  It is lawful to capture an image using an unmanned aircraft in this state:

(1)  for the purpose of professional or scholarly research and development or for another academic purpose by a person acting on behalf of an institution of higher education or a private or independent institution of higher education, as those terms are 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;

(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 Texas military forces, as defined by Section 437.001, or the United States military;

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

(5)  if the image is captured by or for an electric or natural gas utility or a telecommunications provider:

(A)  for operations and maintenance of utility or telecommunications facilities for the purpose of maintaining utility or telecommunications system reliability and integrity;

(B)  for inspecting utility or telecommunications 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 or telecommunications easements; and

(D)  for utility or telecommunications facility routing and siting for the purpose of providing utility or telecommunications service;

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

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

(8)  if the image is captured 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, not including misdemeanors or offenses punishable by a fine only;

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

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

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

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

(G)  of real property or a person on real property that is within 25 miles of the United States border for the sole purpose of ensuring border security;

(9)  if the image is captured 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, as provided by state or local law;

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

(11)  for the purpose of fire suppression;

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

(13)  if the image is captured 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;

(14)  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;

(15)  of public real property or a person on that property;

(16)  if the image is captured 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, and is captured without the intent to conduct surveillance on an individual or real property located in this state;

(17)  in connection with oil pipeline safety and rig protection;

(18)  in connection with port authority surveillance and security;

(19)  if the image is captured by a registered professional land surveyor in connection with the practice of professional surveying, as those terms are defined by Section 1071.002, Occupations Code, provided that no individual is identifiable in the image;

(20)  if the image is captured by a professional engineer licensed under Subchapter G, Chapter 1001, Occupations Code, in connection with the practice of engineering, as defined by Section 1001.003, Occupations Code, provided that no individual is identifiable in the image; [~~or~~]

(21)  if:

(A)  the image is captured by an employee of an insurance company or of an affiliate of the company in connection with the underwriting of an insurance policy, or the rating or adjusting of an insurance claim, regarding real property or a structure on real property; and

(B)  the operator of the unmanned aircraft is authorized by the Federal Aviation Administration to conduct operations within the airspace from which the image is captured;

(22)  if the image:

(A)  is captured for the purpose of delivering consumer goods ordered through an Internet website or mobile application and the operation of the unmanned aircraft at the time the image was captured is conducted in compliance with:

(i)  each applicable Federal Aviation Administration rule, restriction, or exemption; and

(ii)  all required Federal Aviation Administration authorizations; and

(B)  is not publicly disclosed, displayed, or distributed;

(23)  if:

(A)  the image is captured by a state agency or local health authority:

(i)  for the purpose of assessing unsafe environmental conditions when physical entry onto the property is unsafe due to conditions such as an abandoned swimming pool, illegal dumping of refuse, or a chemical leak or spill; and

(ii)  in response to an inspection, or attempted inspection, on commercial property or to a disaster, as defined by Section 418.004; and

(B)  the state agency or local health authority:

(i)  provides notice to the owner or manager of the property, as applicable, before the agency or authority captures the image; or

(ii)  determines that conditions on the property are an imminent threat to public health;

(24)  if the image is captured for the purpose of disaster preparedness, including for the inspection, maintenance, or repair of public infrastructure, by:

(A)  a county with a population of 550,000 or more that is adjacent to a county with a population of 3.3 million or more; or

(B)  a person who is under contract with or otherwise acting under the direction or on behalf of a county described by Paragraph (A); or

(25)  if the image is captured by a governmental entity or a person contracted by or under the direction of a governmental entity, for the purpose of:

(A)  the provision of 9-1-1 service; or

(B)  a mapping project or service other than a project or service for a law enforcement purpose.

SECTION 3.  The heading to Section 423.0045, Government Code, is amended to read as follows:

Sec.  423.0045. OFFENSE: OPERATION OF UNMANNED AIRCRAFT OVER CERTAIN FACILITIES [~~CORRECTIONAL FACILITY, DETENTION FACILITY, OR CRITICAL INFRASTRUCTURE FACILITY~~].

SECTION 4.  Sections 423.0045(b) and (d), Government Code, are amended to read as follows:

(b) A person commits an offense if the person intentionally or knowingly:

(1)  operates an unmanned aircraft over a correctional facility, detention facility, sports venue, or critical infrastructure facility and the unmanned aircraft is not higher than 400 feet above ground level;

(2)  allows an unmanned aircraft to make contact with a correctional facility, detention facility, or critical infrastructure facility, including any person or object on the premises of or within the facility; or

(3)  allows an unmanned aircraft to come within a distance of a correctional facility, detention facility, or critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(d)  An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section or under Section 423.0046 as that section existed on August 31, 2019.

SECTION 5.  Section 423.0045(c), Government Code, as amended by Chapters 824 (H.B. 1643) and 1010 (H.B. 1424), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(c)  This section does not apply to:

(1)  conduct described by Subsection (b) that involves a correctional facility, detention facility, sports venue, or critical infrastructure facility and is committed by:

(A)  the federal government, the state, or a governmental entity;

(B)  a person under contract with or otherwise acting under the direction or on behalf of the federal government, the state, or a governmental entity;

(C)  a law enforcement agency;

(D)  a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency; or

(E)  an operator of an unmanned aircraft that is being used for a commercial purpose, if the operation is conducted in compliance with:

(i)  each applicable Federal Aviation Administration rule, restriction, or exemption; and

(ii)  all required Federal Aviation Administration authorizations; or

(2)  conduct described by Subsection (b) that involves a sports venue or critical infrastructure facility and is committed by:

(A)  an owner or operator of the sports venue or critical infrastructure facility;

(B)  a person under contract with or otherwise acting under the direction or on behalf of an owner or operator of the sports venue or critical infrastructure facility;

(C)  a person who has the prior written consent of the owner or operator of the sports venue or critical infrastructure facility; or

(D)  the owner or occupant of the property on which the sports venue or critical infrastructure facility is located or a person who has the prior written consent of the owner or occupant of that property.

SECTION 6.  Sections 423.0045(a), 423.0046, and 423.006, Government Code, are repealed.

SECTION 7.  (a) Except as otherwise provided by this Act, Chapter 423, Government Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(b)  The repeal of Section 423.0046, Government Code, does not apply to an offense committed before the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

(c)  For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8.  The repeal of Section 423.006, Government Code, does not apply to a cause of action that accrues before the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law applicable to the cause of action immediately before that date, and that law is continued in effect for that purpose.

SECTION 9.  To the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10.  This Act takes effect September 1, 2019.