

1 State of Arkansas
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4

A Bill

HOUSE BILL 1148

5 By: Representative Vaught
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For An Act To Be Entitled

8
9 AN ACT TO CREATE THE ARKANSAS PRIVACY ACT; TO ADDRESS
10 CERTAIN IMAGES CAPTURED BY UNMANNED AIRCRAFT SYSTEMS;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

14
15 TO CREATE THE ARKANSAS PRIVACY ACT; AND
16 TO ADDRESS CERTAIN IMAGES CAPTURED BY
17 UNMANNED AIRCRAFT SYSTEMS.
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. DO NOT CODIFY. Title.

22 This act shall be known and may be cited as the "Arkansas Privacy Act".
23

24 SECTION 2. Arkansas Code § 5-60-103 is amended to read as follows:

25 5-60-103. Unlawful use of an unmanned aircraft system related to
26 infrastructure – Unlawful use of an unmanned aircraft system related to
27 images.

28 (a) As used in this section:

29 (1) "Critical infrastructure" means:

- 30 (A) An electrical power generation or delivery system;
- 31 (B) A petroleum refinery;
- 32 (C) A chemical or rubber manufacturing facility;
- 33 (D) A petroleum or chemical storage facility;
- 34 (E) A railroad operating facility;
- 35 (F) A communication tower or facility;
- 36 (G) A food processing or manufacturing facility; or



(H) A correctional or detention facility; ~~and~~

(2)~~(A)~~ "Image" means a capturing of sound waves, thermal, infrared, ultraviolet, or visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or an individual located on the real property; and

(3)(A) "Unmanned aircraft system" means an unmanned, powered aircraft that:

(i) Does not carry a human operator;

(ii) Can be autonomous or remotely piloted or operated; and

(iii) Can be expendable or recoverable.

(B) "Unmanned aircraft system" does not include:

(i) A satellite orbiting the earth;

(ii) An unmanned aircraft system used by the United States Government or a person who is acting pursuant to contract with the United States Government to conduct surveillance of specific critical infrastructure;

(iii) An unmanned aircraft system used by the state after consultation with the Governor or a person who is acting under contract with the state to conduct surveillance of specific critical infrastructure;

(iv) An unmanned aircraft system used under a certificate of authorization issued by the Federal Aviation Administration; or

(v) An unmanned aircraft used by a law enforcement agency, emergency medical service agency, hazardous materials response team, disaster management agency, or other emergency management agency for the purpose of incident command, area reconnaissance, personnel and equipment deployment monitoring, training, or a related purpose.

(b) A person commits the offense of unlawful use of an unmanned aircraft system related to critical infrastructure if he or she knowingly uses an unmanned aircraft system to conduct surveillance of, gather evidence or collect information about, or photographically or electronically record critical infrastructure without the prior written consent of the owner of the critical infrastructure.

(c) ~~This~~ Subsection (b) of this section does not prohibit:

(1)(A) A person from using an unmanned aircraft system to

1 conduct surveillance of, gather evidence or collect information about, or
2 photographically or electronically record his or her own property that is:

- 3 (i) Located on his or her own immovable property; or
4 (ii) Located on immovable property owned by another
5 person under a valid lease, servitude, right-of-way, right of use, permit,
6 license, or other right.

7 (B) A third person retained by the owner of the property
8 described in subdivision (c)(1)(A) of this section to conduct activities
9 described in subdivision (c)(1)(A) of this section is not prohibited under
10 this section from using an unmanned aircraft system to conduct the activities
11 described in this subdivision (c)(1); or

12 (2) An insurance company or a person acting on behalf of an
13 insurance company from using an unmanned aircraft system for purposes of
14 underwriting an insurance risk or investigating damage to insured property.

15 (d) Unlawful use of an unmanned aircraft system related to critical
16 infrastructure is:

17 (1) A Class B misdemeanor; or

18 (2) A Class A misdemeanor for a second or subsequent offense.

19 (e)(1) A person commits the offense of unlawful use of an unmanned
20 aircraft system related to images if the person purposely uses an unmanned
21 aircraft system to capture an image of an individual or private property with
22 the purpose to conduct surveillance on the individual or private property
23 captured in the image.

24 (2) It is a defense to prosecution under subdivision (e)(1) of
25 this section that the person:

26 (A) Destroyed the image:

27 (i) As soon as the person had knowledge that the
28 image was captured in violation of this section; and

29 (ii) Without disclosing, displaying, or distributing
30 the image to another person; or

31 (B) Captured the image lawfully as authorized under § 27-
32 5-101.

33 (f) Unlawful use of an unmanned aircraft system related to images is a
34 Class C misdemeanor.

35
36 SECTION 3. Arkansas Code Title 5, Chapter 60, Subchapter 1, is amended

1 to add an additional section to read as follows:

2 5-60-126. Unlawful possession, disclosure, display, distribution, or
 3 use of an image captured by an unmanned aircraft system.

4 (a) A person commits the offense of unlawful possession, disclosure,
 5 display, distribution, or use of an image captured by an unmanned aircraft
 6 system if the person:

7 (1) Captures an image in violation of § 5-60-103; and

8 (2) Possesses, discloses, displays, distributes, or otherwise
 9 uses the image captured in violation of § 5-60-103.

10 (b) Unlawful possession, disclosure, display, distribution, or use of
 11 an image captured by an unmanned aircraft system is a:

12 (1) Class C misdemeanor if the person only possessed an image in
 13 violation of § 5-60-103; or

14 (2) Class B misdemeanor if otherwise committed.

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

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

18 (1) Destroyed the image as soon as the person had knowledge that
 19 the image was captured in violation of § 5-60-103 for a charge related to
 20 possession;

21 (2) Stopped disclosing, displaying, distributing, or otherwise
 22 using the image as soon as the person had knowledge that the image was
 23 captured in violation of § 5-60-103 for a charge related to disclosure,
 24 display, distribution, or other use of an image; or

25 (3) Captured the image lawfully as authorized under § 27-5-101.
 26

27 SECTION 4. Arkansas Code Title 12, Chapter 6, Subchapter 7, is amended
 28 to add an additional section to read as follows:

29 12-6-703. Rules on use of unmanned aircraft system by law enforcement
 30 – Reporting.

31 (a) The Department of Public Safety shall adopt rules for the use of
 32 an unmanned aircraft system by a law enforcement agency in this state.

33 (b) By January 15 of each odd-numbered year, each state law
 34 enforcement agency and each county or municipal law enforcement agency
 35 located in a county or municipality, as applicable, with a population greater
 36 than one hundred fifty thousand (150,000), that used or operated an unmanned

1 aircraft system during the preceding twenty-four (24) months shall:

2 (1) Issue a report to the Governor and the General Assembly;

3 (2) Retain the report required by subdivision (b)(1) of this
 4 section for public viewing; and

5 (3) Post the report required by subdivision (b)(1) of this
 6 section on the law enforcement agency's publicly accessible website, if the
 7 law enforcement agency has a publicly accessible website.

8 (c) The report required by subdivision (b)(1) of this section shall
 9 include the:

10 (1) Number of times an unmanned aircraft system was used,
 11 organized by date, time, location, and the type of incidents and
 12 justification for the use;

13 (2) Number of criminal investigations aided by the use of an
 14 unmanned aircraft system and a description of how the unmanned aircraft
 15 system aided each criminal investigation;

16 (3) Number of times an unmanned aircraft system was used for a
 17 law enforcement operation other than a criminal investigation, the date and
 18 location of each law enforcement operation other than a criminal
 19 investigation, and a description of how the unmanned aircraft system aided
 20 each law enforcement operation other than a criminal investigation;

21 (4) Type of information collected on an individual, residence,
 22 property, or area that was not the subject of a law enforcement operation
 23 other than a criminal investigation and the frequency of the collection of
 24 this information; and

25 (5) Total cost of acquiring, maintaining, repairing, and
 26 operating or otherwise using each unmanned aircraft system for the preceding
 27 twenty-four (24) months.

28
 29 SECTION 5. Arkansas Code Title 16, Chapter 40, Subchapter 1, is
 30 amended to add an additional section to read as follows:

31 16-40-108. Illegally or incidentally captured images not subject to
 32 disclosure – Definitions.

33 (a) As used in this section:

34 (1) "Image" means the same as defined in § 5-60-103; and

35 (2) "Unmanned aircraft system" means the same as defined in § 5-
 36 60-103.

1 (b) Except as otherwise provided by subsection (c) of this section, an
 2 image captured in violation of § 5-60-103 or an image captured by an unmanned
 3 aircraft system that was incidental to the lawful capturing of an image:

4 (1) May not be used as evidence in any criminal proceeding,
 5 juvenile proceeding, civil action, or administrative proceeding;

6 (2) Is not subject to disclosure, inspection, or copying under
 7 the Freedom of Information Act of 1967, § 25-19-101 et seq.; and

8 (3) Is not subject to discovery, subpoena, or other means of
 9 legal compulsion for its release.

10 (c) An image described by subsection (b) of this section may be
 11 disclosed and used as evidence to prove a violation of § 5-60-103 and is
 12 subject to discovery, subpoena, or other means of legal compulsion for the
 13 purpose of proving a violation of § 5-60-103.

14
 15 SECTION 6. Arkansas Code Title 16, Chapter 118, Subchapter 1, is
 16 amended to add an additional section to read as follows:

17 16-118-119. Civil action for damages caused by violation of §§ 5-60-
 18 103 and 5-60-126 – Definition.

19 (a) As used in this section, "malice" means a specific intent by a
 20 person to cause substantial injury or harm to an owner or tenant of private
 21 real property.

22 (b) An owner or tenant of private real property may bring an action
 23 against a person who, in violation of § 5-60-103, captured an image of the
 24 private real property or the owner or tenant of the private real property
 25 while on the private real property to:

26 (1) Enjoin a violation or imminent violation of § 5-60-103 or §
 27 5-60-126;

28 (2) Recover a civil damage of:

29 (A) Five thousand dollars (\$5,000) for all images captured
 30 in a single episode in violation of § 5-60-103; or

31 (B) Ten thousand dollars (\$10,000) for disclosure,
 32 display, distribution, or other use of an image captured in a single episode
 33 in violation of § 5-60-126; or

34 (3) Recover actual damages if the person who captured the image
 35 in violation of § 5-60-103 discloses, displays, or distributes the image with
 36 malice.

1 (c) For purposes of recovering the civil damages or actual damages
2 under subsection (b) of this section:

3 (1) All owners of a parcel of real property are considered to be
4 a single owner; and

5 (2) All tenants of a parcel of real property are considered to
6 be a single tenant.

7 (d) In addition to the civil damages and actual damages authorized
8 under this section, the court shall award court costs and reasonable
9 attorney's fees to the prevailing party in an action under this section.

10 (e) An action brought under this section shall be commenced within two
11 (2) years from the date the image was:

12 (1) Captured in violation of § 5-60-103; or

13 (2) Initially disclosed, displayed, distributed, or otherwise
14 used in violation of § 5-60-126.

15
16 SECTION 7. Arkansas Code Title 27, Subtitle 8, is amended to add an
17 additional chapter to read as follows:

18 CHAPTER 118

19 UNMANNED AIRCRAFT SYSTEMS

20
21 27-118-101. Use of unmanned aircraft system to capture image.

22 (a) As used in this section, "unmanned aircraft system" means the same
23 as defined in § 5-60-103.

24 (b) It is lawful to capture an image using an unmanned aircraft system
25 in this state:

26 (1) For purposes of professional or scholarly research and
27 development by a person acting on behalf of an institution of higher
28 education, including without limitation a person who is:

29 (A) A professor, an employee, or a student of the
30 institution of higher education; or

31 (B) Under contract with or otherwise acting under the
32 direction of or on behalf of the institution of higher education;

33 (2) In airspace designated as a test site or range authorized by
34 the Federal Aviation Administration for the purpose of integrating unmanned
35 aircraft systems into the national airspace;

36 (3) As part of an operation, exercise, or mission of the United

1 States Armed Forces;

2 (4) If the image is captured by a satellite for the purposes of
3 mapping;

4 (5) If the image is captured by or for an electric utility or
5 natural gas utility:

6 (A) For operations and maintenance of utility facilities
7 for the purpose of maintaining utility system reliability and integrity;

8 (B) For inspecting utility facilities to determine repair,
9 maintenance, or replacement needs during and after construction of the
10 facilities;

11 (C) For assessing vegetation growth for the purpose of
12 maintaining clearances on utility easements; and

13 (D) For utility facility routing and siting for the
14 purpose of providing utility service;

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

17 (7) Pursuant to a valid search or arrest warrant;

18 (8) If the image is captured by a law enforcement agency or a
19 person who is under contract with or otherwise acting under the direction of
20 or on behalf of a law enforcement agency:

21 (A) In immediate pursuit of a person that law enforcement
22 officers have reasonable suspicion or probable cause to suspect has committed
23 an offense, not including misdemeanors or offenses punishable by a fine only;

24 (B) For the purpose of documenting a crime scene where an
25 offense, not including misdemeanors or offenses punishable by a fine only,
26 has been committed;

27 (C) For the purpose of investigating the scene of a:

28 (i) Human fatality;

29 (ii) Motor vehicle accident causing death or serious
30 bodily injury to a person; or

31 (iii) Motor vehicle accident on a state highway or
32 federal interstate or highway;

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

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

36 (F) Of private property that is generally open to the

1 public where the property owner consents to law enforcement public safety
 2 activities;

3 (9) If the image is captured by a state or local law enforcement
 4 agency, or a person who is under contract with or otherwise acting under the
 5 direction of or on behalf of a state or local law enforcement agency for the
 6 purpose of:

7 (A) Surveying the scene of a catastrophe or other damage
 8 to determine whether a state of emergency should be declared;

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

12 (C) Conducting routine air quality sampling and
 13 monitoring, as provided by state or local law;

14 (10) At the scene of a spill, or a suspected spill, of hazardous
 15 materials;

16 (11) For the purpose of fire suppression;

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

19 (13) If the image is captured by an Arkansas-licensed real
 20 estate broker in connection with the marketing, sale, or financing of real
 21 property, provided that no individual is identifiable in the image;

22 (14) From a height no more than eight feet (8') above ground
 23 level in a public place, if the image was captured without using any
 24 electronic, mechanical, or other means to amplify the image beyond normal
 25 human perception;

26 (15) Of public real property or a person on the public real
 27 property;

28 (16) If the image is captured:

29 (A) By the owner or operator of an oil, gas, water, or
 30 other pipeline for the purpose of inspecting, maintaining, or repairing
 31 pipelines or other related facilities; and

32 (B) Without the intent to conduct surveillance on an
 33 individual or real property;

34 (17) In connection with oil pipeline safety and rig protection;
 35 or

36 (18) In connection with port authority surveillance and

1 security.

2 (c) This section does not apply to the manufacture, assembly,
3 distribution, or sale of an unmanned aircraft.

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