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95th General Assembly

A Bill

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HOUSE BILL 1148

By: Representatives Vaught, Milligan

By: Senator B. Johnson

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS PRIVACY ACT; TO ADDRESS
CERTAIN IMAGES CAPTURED BY UNMANNED AIRCRAFT SYSTEMS;
AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS PRIVACY ACT; AND
TO ADDRESS CERTAIN IMAGES CAPTURED BY
UNMANNED AIRCRAFT SYSTEMS.

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

SECTION 1. DO NOT CODIFY. Title.

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

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

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

(a) As used in this section:

(1) "Critical infrastructure" means:

(A) An electrical power generation or delivery system;

(B) A petroleum refinery;

(C) A chemical or rubber manufacturing facility;

(D) A petroleum or chemical storage facility;

(E) A railroad operating facility;

(F) A communication tower or facility or a communications
or broadband wireline facility;



1 (G) A food processing or manufacturing facility; ~~or~~
2 (H) A correctional or detention facility; ~~and~~ or
3 (I) A natural gas distribution or transmission line,
4 natural gas facility, or natural gas storage;

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

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

11 (i) Does not carry a human operator;
12 (ii) Can be autonomous or remotely piloted or
13 operated; and

14 (iii) Can be expendable or recoverable.

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

16 (i) A satellite orbiting the earth;
17 (ii) An unmanned aircraft system used by the United
18 States Government or a person who is acting pursuant to contract with the
19 United States Government to conduct surveillance of specific critical
20 infrastructure;

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

24 (iv) ~~An unmanned aircraft system used under a~~
25 ~~certificate of authorization issued by the~~ operated by a person for a
26 commercial purpose pursuant to and in compliance with Federal Aviation
27 Administration regulations, authorizations, or exemptions; or

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

33 (b) A person commits the offense of unlawful use of an unmanned
34 aircraft system related to critical infrastructure if he or she knowingly
35 uses an unmanned aircraft system to conduct surveillance of, gather evidence
36 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 conduct surveillance of, gather evidence or collect information about, or photographically or electronically record his or her own property that is:

(i) Located on his or her own immovable property; or

(ii) Located on immovable property owned by another person under a valid lease, servitude, right-of-way, right of use, permit, license, or other right.

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

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

(3) The Arkansas Department of Transportation, the State Highway Commission, a city or county department of public works, or a contractor, consultant, employee, or state entity that is a partner of the department, commission, or a city or county department of public works from using an unmanned aircraft system to perform work authorized by the department, commission, or a city or county department of public works.

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

(1) A Class B misdemeanor; or

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

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

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

1 (A) Destroyed the image:

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

4 (ii) Without disclosing, displaying, or distributing
5 the image to another person; or

6 (B) Captured the image lawfully as authorized under § 27-
7 118-101.

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

10
11 SECTION 3. Arkansas Code Title 5, Chapter 60, Subchapter 1, is amended
12 to add an additional section to read as follows:

13 5-60-126. Unlawful possession, disclosure, display, distribution, or
14 use of an image captured by an unmanned aircraft system.

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

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

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

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

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

25 (2) Class B misdemeanor if otherwise committed.

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

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

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

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

36 (3) Captured the image lawfully as authorized under § 27-118-

1 101.

2
3 SECTION 4. Arkansas Code Title 12, Chapter 6, Subchapter 7, is amended
4 to add an additional section to read as follows:

5 12-6-703. Rules on use of unmanned aircraft system by law enforcement.

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

8 (b) The rules adopted under subsection (a) of this section shall not
9 apply to the Arkansas Highway Police Division of the Arkansas Department of
10 Transportation.

11
12 SECTION 5. Arkansas Code Title 16, Chapter 40, Subchapter 1, is
13 amended to add an additional section to read as follows:

14 16-40-108. Illegally or incidentally captured images not subject to
15 disclosure – Definitions.

16 (a) As used in this section:

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

18 (2) "Unmanned aircraft system" means the same as defined in § 5-
19 60-103.

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

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

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

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

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

33
34 SECTION 6. Arkansas Code Title 16, Chapter 118, Subchapter 1, is
35 amended to add an additional section to read as follows:

36 16-118-119. Civil action for damages caused by violation of §§ 5-60-

1 103 and 5-60-126 – Definition.

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

5 (b) An owner or tenant of private real property may bring an action
6 against a person who, in violation of § 5-60-103, captured an image of the
7 private real property or the owner or tenant of the private real property
8 while on the private real property, with a reasonable expectation of privacy
9 to:

10 (1) Enjoin a violation or imminent violation of § 5-60-103 or §
11 5-60-126;

12 (2) Recover a civil damage of:

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

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

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

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

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

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

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

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

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

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

35
36 SECTION 7. Arkansas Code Title 27, Subtitle 8, is amended to add an

1 additional chapter to read as follows:

2 CHAPTER 118

3 UNMANNED AIRCRAFT SYSTEMS

4
5 27-118-101. Use of unmanned aircraft system to capture image.

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

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

10 (1) For the purposes of professional research, scholarly
11 research and development, educational, agricultural, or athletic purposes,
12 gathering data for modeling, or the collection of data to further a body of
13 knowledge by a person acting on behalf of an institution of higher education
14 or the Arkansas State Game and Fish Commission, including without limitation
15 a person who is:

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

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

20 (C) A biologist of the Arkansas State Game and Fish
21 Commission;

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

25 (3) As part of an operation, exercise, or mission of the United
26 States Armed Forces;

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

29 (5) If the image is captured by or for an electric utility,
30 natural gas utility, or water and wastewater utility:

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

33 (B) For inspecting utility facilities to determine repair,
34 maintenance, or replacement needs during and after construction of the
35 facilities;

36 (C) For assessing vegetation growth for the purpose of

1 maintaining clearances on utility easements; and

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

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

6 (7) Pursuant to a valid search warrant executed by the
7 following:

8 (A) The Arkansas State Game and Fish Commission;

9 (B) A Division of Arkansas State Police officer;

10 (C) A sheriff;

11 (D) The Arkansas Highway Police Division of the Arkansas
12 Department of Transportation; or

13 (E) A city or county law enforcement officer;

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

17 (A) In immediate pursuit of a person that law enforcement
18 officers have reasonable suspicion or probable cause to suspect has committed
19 an offense;

20 (B) For the purpose of documenting a crime scene where an
21 offense has been committed;

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

23 (i) Human fatality;

24 (ii) Motor vehicle accident, boating accident, or
25 hunting accident causing death or serious bodily injury to a person;

26 (iii) Motor vehicle accident on a state highway or
27 federal interstate or highway; or

28 (iv) Boating accident on public waters of this
29 state;

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

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

33 (F) Of private property that is generally open to the
34 public where the property owner consents to law enforcement public safety
35 activities;

36 (9) If the image is captured by a state or local law enforcement

1 agency, or a person who is under contract with or otherwise acting under the
2 direction of or on behalf of a state or local law enforcement agency for the
3 purpose of:

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

6 (B) Preserving public safety, protecting property, or
7 surveying damage or contamination during a lawfully declared state of
8 emergency; or

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

11 (10) At the scene of a spill, or a suspected spill, of hazardous
12 materials;

13 (11) For the purpose of fire suppression;

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

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

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

23 (15) Of public real property or property of a state-supported
24 institute of higher education or a person on the public real property or
25 property of a state-supported institute of higher education;

26 (16) If the image is captured:

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

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

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

33 (18) In connection with port authority surveillance and
34 security;

35 (19) By an assessor with the consent of the owner of the
36 property;

1 (20) By a surveyor within the Department of Transformation and
2 Shared Services for mapping and land surveying tasks;

3 (21) If the image is captured by an employee, consultant,
4 contractor, or other person acting on behalf of the Arkansas Department of
5 Transportation, State Highway Commission, Arkansas Highway Police Division of
6 the Arkansas Department of Transportation, or a city or county department of
7 public works;

8 (22) If the image is captured by an employee of an insurance
9 company or an affiliate of an insurance company in connection with the
10 underwriting of an insurance policy, or the rating or adjusting of an
11 insurance claim, regarding real property or a structure on real property;

12 (23) By an engineer or surveyor licensed in the State of
13 Arkansas for the purpose of:

14 (A) Mapping and land surveying tasks;

15 (B) Collecting geographical information system data
16 supporting public or private infrastructure;

17 (24) For the operation by or on behalf of an owner or operator
18 of a critical infrastructure facility for the purpose of siting, deploying,
19 inspecting, monitoring, operating, or maintaining the facility; or

20 (25) If the image is captured by the Arkansas State Game and
21 Fish Commission while conducting fish, wildlife, or habitat surveys or if
22 reasonable suspicion exists that a violation of an Arkansas State Game and
23 Fish Commission regulation has occurred or is about to occur.

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

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27 /s/Vaught
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