

SENATE BILL 1892

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 29
and Title 39, relative to the protection of privacy.

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

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, is amended by adding Sections 2 through 8 below as a new part.

SECTION 2. As used in this part:

(1) "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; and

(2) "Unmanned aircraft" means an airborne device that is operated without an individual in or on the device.

SECTION 3.

(a) Notwithstanding Section 4, it is lawful to capture an image using an unmanned aircraft 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 § 49-7-802, 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 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:
 - (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; or
 - (D) For utility facility routing and siting for the purpose of providing utility service;
- (6) With the consent of the individual who owns or lawfully occupies the real property captured in the image;
- (7) For law enforcement purposes, as permitted by § 39-13-609;
- (8) 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;
- (9) At the scene of a spill, or a suspected spill, of hazardous materials;

(10) For the purpose of fire suppression;

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

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

(13) Of public real property or a person on that property;

(14) 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;

(15) In connection with oil and gas pipeline and well safety and protection; or

(16) In connection with port authority surveillance and security.

(b) An image captured by a state or local government agency, or by a person who is under contract with or otherwise acting under the direction or on behalf of such agency, shall be handled in accordance with § 39-13-609 and shall not be used for any purpose other than the lawful purpose for which the image was captured as permitted by this section.

SECTION 4.

(a) Subject to the exceptions set forth in Section 3(a), a person commits an offense if the person:

(1) Uses an unmanned aircraft to capture an image of 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) Knowingly uses an image in a manner prohibited by Section 3(b).

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

(c) 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.

SECTION 5.

(a) A person commits an offense if the person:

(1) Captures an image in violation of Section 4; and

(2)

(A) Possesses that image; or

(B) Discloses, displays, distributes, or otherwise uses that image.

(b) An offense under subdivision (a)(2)(A) is a Class C misdemeanor. An offense under subdivision (a)(2)(B) 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 4.

(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 4.

SECTION 6.

(a) Except as otherwise provided by subsection (b), an image captured in violation of Section 4, or an image captured by an 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 title 10, chapter 7; 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 part and is subject to discovery, subpoena, or other means of legal compulsion for that purpose.

SECTION 7. This part shall not apply to the manufacture, assembly, distribution, or sale of an unmanned aircraft.

SECTION 8. Nothing in this part shall be construed as permitting any act prohibited by other law.

SECTION 9. Tennessee Code Annotated, Section 39-14-405, is amended by deleting the period at the end of subsection (d) and adding the following:

or when a person causes an unmanned aircraft to enter that portion of the airspace above the owner's land not regulated as navigable airspace by the federal aviation administration.

SECTION 10. Tennessee Code Annotated, Title 39, Chapter 13, Part 6, is amended by adding a new, appropriately designated section as follows:

(a) This section establishes the offenses of surreptitious commercial surveillance and aggravated surreptitious commercial surveillance.

(b) As used in this section:

(1) "Commercial surveillance" means the taking of electronic or photographic images or audio recording of the premises or operations of an employer in the state; and

(2) "Employer" means a person who operates a business or commercial enterprise of any type or nature;

(3) "Surreptitious" means undertaken in a manner to avoid detection.

(c) The offense of surreptitious commercial surveillance is committed when an employee of an employer or an individual on the premises of an employer for the purpose of selling or delivering goods or services to the employer, engages in surreptitious commercial surveillance without the consent of the employer.

(d) The offense of aggravated surreptitious commercial surveillance is committed when an individual who has committed surreptitious commercial surveillance delivers, transmits or distributes to another person electronic or photographic images or audio recordings obtained through commercial surveillance under false pretenses.

(e)

(1) A first violation of subsection (c) is a Class B misdemeanor.

(2) The second and subsequent violation of subsection (c) is a Class A misdemeanor.

(3) A violation of subsection (d) is a Class A misdemeanor.

SECTION 11. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or

applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect July 1, 2014, the public welfare requiring it.