

Regular Session, 2014

SENATE BILL NO. 330

BY SENATOR CLAITOR

CRIME/PUNISHMENT. Creates the crime of illegal use of unmanned aircraft to capture images (DRONE Act). (gov sig)

1 AN ACT
2 To enact Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of
3 R.S. 40:2901 through 2903, and R.S. 14:322.1, relative to the use and regulation of
4 unmanned aircraft; to enact the "Deterrence of Reconnaissance Over Noncriminal
5 Entities Act"; to create the crime of illegal use of unmanned aircraft to capture
6 images and wireless data; to provide definitions; to provide exceptions; to provide
7 criminal and civil penalties; to provide relative to the use of unmanned aircraft by
8 law enforcement agencies; to provide reporting requirements; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 14:322.1 is hereby enacted to read as follows:

12 **§322.1. Illegal use of unmanned aircraft to capture images and wireless data;**
13 **criminal and civil penalties**

14 **A. This Section shall be known and may be cited as the "Deterrence of**
15 **Reconnaissance Over Noncriminal Entities (DRONE) Act".**

16 **B. It shall be unlawful for any person to:**

17 **(1) Use an unmanned aircraft to capture an image of an individual or**

1 privately owned immovable property with the intent to conduct surveillance on
2 the individual or property captured in the image.

3 (2) Use an unmanned aircraft to capture a wireless data transmission for
4 any purpose not authorized by the sender or recipient of the wireless data
5 transmission.

6 (3) Possess an image captured in violation of Paragraph (1) of this
7 Subsection.

8 (4) Disclose, display, distribute, or otherwise use an image captured in
9 violation of Paragraph (1) of this Subsection.

10 C. Each image that a person captures, possesses, discloses, displays,
11 distributes, or otherwise uses in violation of Subsection B of this Section shall
12 form the basis for a separate offense under this Section.

13 D. For purposes of this Section:

14 (1) "Image" means any capturing of sound waves, thermal, infrared,
15 ultraviolet, visible light, or other electromagnetic waves, odor, or other
16 conditions existing on or about immovable property or on or about an
17 individual located on that property.

18 (2) "Unmanned aircraft" means an aircraft that is operated without
19 direct human intervention from on or within the aircraft, not including a
20 satellite.

21 (3) "Wireless data transmission" or "data" means any transmission of
22 digital information or any communication via a wireless Internet service,
23 cellular telephone, or similar device or means of transmission.

24 E. It shall not be a violation of Paragraph (B)(1) of this Section to
25 capture an image using an unmanned aircraft:

26 (1) In airspace designated as a test site or range authorized by the
27 Federal Aviation Administration for the purpose of integrating unmanned
28 aircraft systems into the national airspace.

29 (2) As part of an operation, exercise, or mission of any branch of the

1 United States military or United States Department of Homeland Security.

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

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

4 (a) For operations and maintenance of utility facilities for the purpose
5 of maintaining utility system reliability and integrity.

6 (b) For inspecting utility facilities to determine repair, maintenance, or
7 replacement needs during and after construction of such facilities.

8 (c) For assessing vegetation growth for the purpose of maintaining
9 clearances on utility servitudes.

10 (d) For utility facility routing and siting for the purpose of providing
11 utility service.

12 (e) However, in order to retain the exclusion from Paragraph (B)(1) of
13 this Section provided for electric and natural gas utilities, the data or image
14 obtained by such utilities for the purposes of this Paragraph shall only be used
15 for such purposes and shall not be shared with or sold to any other individual
16 or business.

17 (5) With the consent of the individual who owns or lawfully occupies the
18 immovable property captured in the image.

19 (6) Pursuant to a valid search or arrest warrant.

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

23 (a) In immediate pursuit of a person law enforcement officers have
24 reasonable suspicion or probable cause to suspect has committed an offense, not
25 including misdemeanors.

26 (b) For the purpose of documenting a crime scene where an offense, not
27 including misdemeanors, has been committed.

28 (c) For the purpose of investigating the scene of:

29 (i) A human fatality.

1 (ii) A motor vehicle accident resulting in death or serious bodily injury
2 to a person.

3 (iii) Any motor vehicle accident on a state highway or federal interstate
4 or highway.

5 (d) In connection with the search for a missing person.

6 (e) For the purpose of conducting a tactical operation under
7 circumstances in which there exists a threat to human life.

8 (f) If the image captured is of private immovable property that is
9 generally open to the public and where the property owner generally consents
10 to law enforcement public safety enforcement and responsibilities.

11 (8) If the image is captured by state or local law enforcement authorities,
12 or a person who is under contract with or otherwise acting under the direction
13 or on behalf of such authorities, for the purpose of:

14 (a) Surveying the scene of a catastrophe or other damage to determine
15 whether a state of emergency should be declared.

16 (b) Preserving public safety, protecting property, or surveying damage
17 or contamination during a lawfully declared state of emergency.

18 (c) Conducting routine air quality sampling and monitoring, as provided
19 by state or local law.

20 (9) At the scene of a spill or suspected spill of hazardous materials.

21 (10) For the purpose of fire suppression.

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

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

27 (13) If the image is of public immovable property or a person on that
28 property.

29 (14) If the image is captured by the owner or operator of an oil, gas,

1 water, or other pipeline for the purpose of inspecting, maintaining, or repairing
2 the pipeline or other related facilities.

3 (15) If the image is captured in connection with oil pipeline safety and rig
4 protection.

5 (16) If the image is captured in connection with port authority
6 surveillance and security.

7 (17) As authorized or permitted by the Federal Aviation Administration
8 for use in a motion picture, television, or similar production when the
9 production is authorized by the property owner and authorized by a state or
10 local permit agency, if authorization for the production by a state or local
11 permit agency is required.

12 (18) If the image captured is used solely in a generally accepted
13 agricultural operation as defined in R.S. 3:3602(5) or solely in conjunction with
14 a research program or initiative conducted by a public institution of higher
15 education relative to agriculture.

16 F. It shall not be a violation of Paragraph (B)(2) of this Section to capture
17 a wireless data transmission using an unmanned aircraft:

18 (1) In airspace designated as a test site or range authorized by the
19 Federal Aviation Administration for the purpose of integrating unmanned
20 aircraft systems into the national airspace.

21 (2) As part of an operation, exercise, or mission of any branch of the
22 United States military.

23 (3) Pursuant to a valid search or arrest warrant.

24 G. It shall be an affirmative defense to prosecution for a violation of this
25 Section that the person destroyed the image or data as soon as the person had
26 knowledge that the image or data was captured in violation of this Section and
27 without disclosing, displaying, or distributing the image or data to a third party.

28 H.(1) Except as otherwise provided in Paragraph (2) of this Subsection,
29 an image or wireless data transmission captured in violation of this Section, or

1 an image or wireless data transmission captured by an unmanned aircraft that
2 was incidental to the lawful capturing of an image or wireless data
3 transmission:

4 (a) Shall not be used as evidence in any criminal or juvenile proceeding,
5 civil action, or administrative proceeding.

6 (b) Shall not be subject to disclosure, inspection, or copying under Title
7 44 of the Louisiana Revised Statutes of 1950.

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

10 (2) An image or wireless data transmission as described in Paragraph (1)
11 of this Subsection may be disclosed and used as evidence to prove a violation of
12 this Section and is subject to discovery, subpoena, or other means of legal
13 compulsion solely for that purpose.

14 I. Penalties. (1) Whoever violates Paragraph (B)(1) or (B)(2) of this
15 Section shall be fined not more than five hundred dollars.

16 (2) Whoever violates Paragraph (B)(3) of this Section shall be fined not
17 more than two thousand dollars, or imprisoned for not more than six months,
18 or both.

19 J. Civil actions. (1) An owner or lessee of privately owned immovable
20 property, or the sender or recipient of a wireless data transmission, may bring
21 against a person who, in violation of this Section, captured an image of the
22 property or the owner or lessee while on the property, or who captured a
23 wireless data transmission in violation of this Section, respectively, an action to:

24 (a) Enjoin a violation or imminent violation of this Section.

25 (b) Recover a civil penalty of:

26 (i) Five thousand dollars for all images or data captured in a single
27 occurrence in violation of this Section.

28 (ii) Ten thousand dollars for disclosure, display, distribution, or other
29 use of any images or wireless data transmission captured in a single occurrence

1 in violation of this Section.

2 (iii) Recover actual damages if the person who captured the image or
 3 data transmission in violation of this Section discloses, displays, or distributes
 4 the image or data with malicious and willful intent.

5 (2) For purposes of recovering the civil penalty or actual damages under
 6 this Subsection, all owners of a parcel of immovable property are considered to
 7 be a single owner and all lessors of a parcel of immovable property are
 8 considered to be a single lessor.

9 (3) In addition to any civil penalties authorized under this Subsection,
 10 the court shall award court costs and reasonable attorney fees to the prevailing
 11 party.

12 (4) Venue for an action under this Subsection shall be governed by
 13 Chapter 2 of Book I of Title I of the Code of Civil Procedure.

14 (5) Any action under this Subsection shall be commenced within two
 15 years from the later of the following:

16 (a) The date the image or wireless data transmission was captured in
 17 violation of this Section.

18 (b) The date the image or wireless data transmission was initially
 19 disclosed, displayed, distributed, or otherwise used in violation of this Section.

20 K. This Section shall not apply to the manufacture, assembly,
 21 distribution, or sale of unmanned aircraft.

22 Section 2. Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950,
 23 comprised of R.S. 40:2901 through 2903, is hereby enacted to read as follows:

24 **CHAPTER 36. UNMANNED AIRCRAFT**

25 **§2901. Unmanned aircraft; rules for use by law enforcement agencies**

26 **The Department of Public Safety and Corrections shall promulgate rules**
 27 **and regulations in accordance with the Administrative Procedure Act for the**
 28 **use of unmanned aircraft by law enforcement agencies in this state.**

29 **§2902. Reporting by law enforcement agencies**

1 **A. Not earlier than January first and not later than January fifteenth of**
2 **each odd-numbered year, each state, parish, and municipal law enforcement**
3 **agency that used or operated an unmanned aircraft during the preceding**
4 **twenty-four months shall issue a written report to the governor and the**
5 **legislature containing the following:**

6 **(1) The number of times an unmanned aircraft was used, organized by**
7 **date, time, location, and the types of incidents and justifications for the use of**
8 **the unmanned aircraft.**

9 **(2) The number of criminal investigations aided by the use of an**
10 **unmanned aircraft and a description of how the unmanned aircraft aided each**
11 **investigation.**

12 **(3) The number of times an unmanned aircraft was used for a law**
13 **enforcement operation other than a criminal investigation, the dates and**
14 **locations of those operations, and a description of how the unmanned aircraft**
15 **aided each operation.**

16 **(4) The type of information collected on an individual, residence,**
17 **property, or area that was not the subject of a law enforcement operation and**
18 **the frequency of the collection of this information.**

19 **(5) The total cost of acquiring, maintaining, repairing, operating, and**
20 **otherwise using each unmanned aircraft for the preceding twenty-four months.**

21 **B. Each law enforcement agency required to issue a report provided for**
22 **in Subsection A of this Section shall:**

23 **(1) Retain the report for public inspection.**

24 **(2) Post the report on the law enforcement agency's publicly accessible**
25 **website, if the law enforcement agency maintains such website.**

26 **§2903. Exceptions**

27 **Nothing in this Chapter may be construed to apply to model aircraft as**
28 **defined in section 336(c) of the FAA Modernization and Reform Act of 2012.**

29 Section 3. If any provision or item of this Act or the application thereof is held

1 invalid, such invalidity shall not affect other provisions, items, or applications of this Act
 2 that can be given effect without the invalid provisions, items, or applications, and to this end
 3 the provisions of this Act are hereby declared severable.

4 Section 4. This Act shall become effective upon signature by the governor or, if not
 5 signed by the governor, upon expiration of the time for bills to become law without signature
 6 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
 7 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 8 effective on the day following such approval.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

Claitor (SB 330)

Proposed law provides relative to the "Deterrence of Reconnaissance Over Noncriminal Entities (DRONE) Act".

Proposed law provides that it is unlawful for any person to:

- (1) Use an unmanned aircraft to capture an image of an individual or privately owned immovable property with the intent to conduct surveillance on the individual or property.
- (2) Use an unmanned aircraft to capture a wireless data transmission for any purpose not authorized by the sender or recipient of the wireless data transmission.
- (3) Possess an image captured in violation of proposed law.
- (4) Disclose, display, distribute, or otherwise use an image captured in violation of proposed law.

Proposed law provides that each image or data captured or used in violation of proposed law forms the basis for a separate offense.

Proposed law provides the following definitions:

- (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 immovable property or on or about an individual located on that property.
- (2) "Unmanned aircraft" means an aircraft that is operated without direct human intervention from on or within the aircraft, not including a satellite.
- (3) "Wireless data transmission" or "data" means any transmission of digital information or any communication via a wireless Internet service, cellular telephone, or similar device or means of transmission.

Proposed law provides that the capturing of an image is not a violation of proposed law if

the image is captured:

- (1) 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.
- (2) As part of an operation, exercise, or mission of any branch of the United States military or Department of Homeland Security.
- (3) If the image is captured by a satellite for the purposes of mapping.
- (4) If the image is captured by or for an electric or natural gas utility for certain specific purposes relative to operations and maintenance. Further provides that such images shall not be shared with or sold to any other individual or business.
- (5) With the consent of the individual who owns or lawfully occupies the immovable property captured in the image.
- (6) Pursuant to a valid search or arrest warrant.
- (7) If the image is captured by a law enforcement agency or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement agency for certain specific law enforcement purposes.
- (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 such authorities, for certain specific purposes relative to the declaration of a state of emergency or air quality monitoring.
- (9) At the scene of a spill or 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) 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.
- (13) If the image is of public immovable 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 the pipeline or other related facilities.
- (15) If the image is captured in connection with oil pipeline safety and rig protection.
- (16) If the image is captured in connection with port authority surveillance and security.
- (17) As authorized or permitted by the Federal Aviation Administration for use in a motion picture, television, or similar production when the production is authorized by the property owner and authorized by a state or local permit agency, if authorization for the production by a state or local permit agency is required.
- (18) If the image is captured in connection with a generally accepted agricultural operation or solely in conjunction with a research program or initiative conducted by a public institution of higher education relative to agriculture.

Proposed law provides that it is not a violation of proposed law to capture a wireless data transmission using an unmanned aircraft:

- (1) 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.
- (2) As part of an operation, exercise, or mission of any branch of the United States military.
- (3) Pursuant to a valid search or arrest warrant.

Proposed law provides that it is an affirmative defense to prosecution for a violation of proposed law that the person destroyed the image or data as soon as the person had knowledge that the image or data was captured in violation of proposed law and without disclosing, displaying, or distributing the image or data to a third party.

Proposed law provides that an image or data captured either in violation of proposed law or incidental to the lawful capturing of an image or data cannot be used as evidence in any legal proceeding, is not subject to disclosure, inspection, or copying under present law (Public Records Law), and is not subject to discovery. However, proposed law further provides that such image or data may be disclosed and used as evidence to prove a violation of proposed law and is subject to discovery solely for that purpose.

Proposed law provides that whoever captures or possesses an image or data in violation of proposed law is to be fined up to \$500, and that whoever discloses or otherwise uses such image or data is to be fined up to \$2,000, or imprisoned for up to six months, or both.

Proposed law provides that an owner or lessee of privately owned immovable property, or sender or recipient of a wireless data transmission, may bring a civil action against a person who captured an image of the property or the owner or lessee while on the property, or against a person who captured the wireless data transmission, in violation of proposed law in order to enjoin a violation or imminent violation of proposed law, recover specific civil penalties, and recover actual damages for malicious and willful violation of proposed law.

Proposed law provides that for purposes of recovering civil penalties or actual damages, all owners of a parcel of immovable property are considered to be a single owner and all lessors of a parcel of immovable property are considered to be a single lessor.

Proposed law provides that the court is to award court costs and reasonable attorney fees to the prevailing party.

Proposed law provides relative to venue for a civil action under proposed law.

Proposed law provides that any civil action under proposed law must be commenced within two years from the later of the date the image or data was captured or the date the image or data was used in violation of proposed law.

Proposed law provides that proposed law does not apply to the manufacture, assembly, distribution, or sale of unmanned aircraft.

Proposed law provides that the Dept. of Public Safety and Corrections is to promulgate rules and regulations in accordance with present law (Administrative Procedure Act) for the use of unmanned aircraft by law enforcement agencies.

Proposed law provides that between January first and January 15th of each odd-numbered year, each law enforcement agency that used or operated an unmanned aircraft during the preceding 24 months is to issue a written report to the governor and the legislature

containing the number of times an unmanned aircraft was used, the types of incidents and justifications for the use of the unmanned aircraft, the type of information collected and frequency of collection on an individual or property that was not the subject of a law enforcement operation, and the total cost of acquiring and using each unmanned aircraft for the preceding 24 months.

Proposed law provides that each law enforcement agency required to issue a report must retain the report for public inspection and post the report on the law enforcement agency's publicly accessible website.

Proposed law provides an exception to proposed law for model aircraft usage as defined by federal law.

Proposed law provides for severability of law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 14:322.1 and R.S. 40:2901- 2903)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds exception for operations of the Department of Homeland Security.
2. Adds exception for motion picture, television, and similar productions under certain circumstances.
3. Deletes exception for capturing images of pipeline operations without intent to conduct surveillance on an individual or immovable property.
4. Adds wireless data to coverage of proposed law.

Senate Floor Amendments to engrossed bill.

1. Adds a requirement to the exception granted to electric or natural gas utilities by providing that such images shall not be shared with or sold to any other individual or business.
2. Adds an exception relative to certain agricultural operations.
3. Excepts from a portion of proposed law model aircraft as defined by federal law.
4. Technical amendments.