

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)

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AN ACT

To enact Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:2901 and 2902, and R.S. 14:322.1, relative to the use and regulation of unmanned aircraft; to enact the "Deterrence of Reconnaissance Over Noncriminal Entities Act"; to create the crime of illegal use of unmanned aircraft to capture images; to provide definitions; to provide exceptions; to provide criminal and civil penalties; to provide relative to the use of unmanned aircraft by law enforcement agencies; to provide reporting requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

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

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

**B. It shall be unlawful for any person to:**  
**(1) Use an unmanned aircraft to capture an image of an individual or privately owned real property with the intent to conduct surveillance on the**

1 individual or property captured in the image.

2 (2) Possess an image captured in violation of Paragraph (A)(1) of this  
3 Section.

4 (3) Disclose, display, distribute, or otherwise use an image captured in  
5 violation of Paragraph (A)(1) of this Section.

6 C. Each image that a person captures, possesses, discloses, displays,  
7 distributes, or otherwise uses in violation of Subsection A of this Section shall  
8 form the basis for a separate offense under this Section.

9 D. For purposes of this Section:

10 (1) "Image" means any capturing of sound waves, thermal, infrared,  
11 ultraviolet, visible light, or other electromagnetic waves, odor, or other  
12 conditions existing on or about real property or on or about an individual  
13 located on that property.

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

17 E. It shall not be a violation of this Section to capture an image using an  
18 unmanned aircraft:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17                    (i) A human fatality.

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

20                    (iii) Any motor vehicle accident on a state highway or federal interstate  
21 or highway.

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

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

25                    (f) If the image captured is of private property that is generally open to  
26 the public and where the property owner generally consents to law enforcement  
27 public safety enforcement and responsibilities.

28                    (8) If the image is captured by state or local law enforcement authorities,  
29 or a person who is under contract with or otherwise acting under the direction

1 or on behalf of such authorities, for the purpose of:

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

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

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

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

9 (10) For the purpose of fire suppression.

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

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

15 (13) If the image is of public real property or a person on that property.

16 (14) If the image is captured by the owner or operator of an oil, gas,  
17 water, or other pipeline for the purpose of inspecting, maintaining, or repairing  
18 the pipeline or other related facilities, and is captured without the intent to  
19 conduct surveillance on an individual or real property.

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

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

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

28 G.(1) Except as otherwise provided in Paragraph (2) of this Subsection,  
29 an image captured in violation of this Section, or an image captured by an

1 unmanned aircraft that was incidental to the lawful capturing of an image:

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

4 (b) Shall not be subject to disclosure, inspection, or copying under Title  
5 44 of the Louisiana Revised Statutes of 1950.

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

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

12 H. Penalties. (1) Whoever violates Paragraph (A)(1) or (A)(2) of this  
13 Section shall be fined not more than five hundred dollars.

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

17 I. Civil actions. (1) An owner or lessee of privately owned real property  
18 may bring against a person who, in violation of this Section, captured an image  
19 of the property or the owner or lessee while on the property an action to:

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

21 (b) Recover a civil penalty of:

22 (i) Five thousand dollars for all images captured in a single episode in  
23 violation of this Section.

24 (ii) Ten thousand dollars for disclosure, display, distribution, or other  
25 use of any images captured in a single occurrence in violation of this Section.

26 (iii) Recover actual damages if the person who captured the image in  
27 violation of this Section discloses, displays, or distributes the image with  
28 malicious and willful intent.

29 (2) For purposes of recovering the civil penalty or actual damages under

1 this Subsection, all owners of a parcel of real property are considered to be a  
2 single owner and all lessors of a parcel of real property are considered to be a  
3 single lessor.

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

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

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

11 (a) The date the image was captured in violation of this Section.

12 (b) The date the image was initially disclosed, displayed, distributed, or  
13 otherwise used in violation of this Section.

14 J. This Section shall not apply to the manufacture, assembly,  
15 distribution, or sale of unmanned aircraft.

16 Section 2. Chapter 36 of Title 40 of the Louisiana Revised Statutes of 1950,  
17 comprised of R.S. 40:2901 and 2902, is hereby enacted to read as follows:

18 **CHAPTER 36. UNMANNED AIRCRAFT**

19 **§2901. Unmanned aircraft; rules for use by law enforcement agencies**

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

23 **§2902. Reporting by law enforcement agencies**

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

29 (1) The number of times an unmanned aircraft was used, organized by

1           **date, time, location, and the types of incidents and justifications for the use of**  
2           **the unmanned aircraft.**

3           **(2) The number of criminal investigations aided by the use of an**  
4           **unmanned aircraft and a description of how the unmanned aircraft aided each**  
5           **investigation.**

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

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

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

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

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

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

20           Section 3. If any provision or item of this Act or the application thereof is held  
21           invalid, such invalidity shall not affect other provisions, items, or applications of this Act  
22           that can be given effect without the invalid provisions, items, or applications, and to this end  
23           the provisions of this Act are hereby declared severable.

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

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

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## 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 real property with the intent to conduct surveillance on the individual or property.
- (2) Possess an image captured in violation of proposed law.
- (3) Disclose, display, distribute, or otherwise use an image captured in violation of proposed law.

Proposed law provides that each image 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 real 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.

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.
- (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.
- (5) With the consent of the individual who owns or lawfully occupies the real 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 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 the pipeline or other related facilities, and is captured without the intent to conduct surveillance.
- (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.

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

Proposed law provides that an image captured either in violation of proposed law or incidental to the lawful capturing of an image 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 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 in violation of proposed law is to be fined up to \$500, and that whoever discloses or otherwise uses such image 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 real property may bring a civil action against a person who captured an image of the property or the owner or lessee while on the property 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 real property are considered to be a single owner and all lessors of a parcel of real 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 was captured or the date the image 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 1 and January 15 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 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 and 2902)