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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) 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 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.
- (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.
- (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.
- (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.

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 real 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 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 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 15<sup>th</sup> 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)

### 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 real property.
4. Adds wireless data to coverage of proposed law.