

2017 Regular Session

HOUSE BILL NO. 279

BY REPRESENTATIVE JORDAN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

**PUBLIC OFFICIALS:** Prohibits interference with the recording of public officials and employees acting in an official capacity, with certain exceptions

1 AN ACT

2 To enact Chapter 6 of Title 42 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 42:341 through 345, relative to public officials and employees; to prohibit a  
4 public official or employee from interfering with the recording of public officials and  
5 employees while acting in an official capacity; to prohibit a public official or  
6 employee from deleting data from other person's recording devices; to prohibit a  
7 public official or employee from seizing certain recording devices; to provide certain  
8 exceptions; to provide for enforcement and remedies; and to provide for related  
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 6 of Title 42 of the Louisiana Revised Statutes of 1950, to be  
12 comprised of R.S. 42:341 through 345, is hereby enacted to read as follows:

13 CHAPTER 6. CITIZEN'S RIGHT TO OBSERVE AND RECORD

14 PUBLIC OFFICIALS AND EMPLOYEES

15 §341. Public policy; liberal construction

16 It is essential to the maintenance of a legitimate, democratic government that  
17 is supported and trusted by its citizens that public business be performed in an open  
18 and public manner and that public officials and employees act with integrity while  
19 tending to the public's business. Toward this end, the provisions of this Chapter shall  
20 be construed liberally in favor of the public.

1        §342. Prohibitions on any obstructions to recording; exceptions

2            A. A public official or employee shall not:

3            (1) Prohibit a person from using a recording device to record the activities  
4            of a public official or employee in the conduct of or while performing the duties of  
5            his public office or position in a place that is open to and accessible to the general  
6            public or on any private property where the person is lawfully present unless the act  
7            of recording or the location of the person making the recording;

8            (a) Presents a risk to the physical safety of anyone present, not including the  
9            person making the recording.

10           (b) Constitutes an element of a criminal offense.

11           (c) Could reasonably be expected to lead to the infringement of copyrighted  
12           material.

13           (2) Delete any electronic data or any other information from a recording  
14           device without the express written permission of the person owning or possessing the  
15           recording device or otherwise destroy information contained in the recording device  
16           without the express written permission of the person owning or possessing the  
17           recording device.

18           (3) Seize or confiscate a recording device unless the recording device  
19           appears to be involved in the commission of a crime.

20           B. The provisions of this Section shall not apply to or authorize a person  
21           using a recording device to intrude upon the seclusion or solitude of another person  
22           or upon the other person's private affairs or concerns if the intrusion violates the  
23           person's reasonable expectation of privacy, including any violation of the person's  
24           privacy rights under the Health Insurance Portability and Accountability Act of 1996.

25           C.(1) The provisions of this Section shall not affect the authority of a court  
26           of competent jurisdiction to issue binding orders or to regulate the absence, presence,  
27           or conduct of citizens occupying buildings or property under the jurisdiction of the  
28           court.

1           (2) The provisions of this Section shall not affect the authority of a public  
2           body to adopt reasonable rules to maintain order during its meetings.

3           §343. Enforcement

4           A. The attorney general shall enforce the provisions of this Chapter  
5           throughout the state. He may institute enforcement proceedings on his own initiative  
6           and shall institute such proceedings upon a complaint filed with him by any person  
7           unless he gives written reasons as to why the suit should not be filed.

8           B. Any person who has reason to believe that the provisions of this Chapter  
9           have been violated may institute enforcement proceedings.

10          §344. Remedies

11          A. If the court finds that a public official or employee violated the provisions  
12          of this Chapter, it shall award the person who brought the enforcement proceeding  
13          reasonable attorney fees and other costs of litigation.

14          B. In addition, if the court finds that a public official or employee violated  
15          the provisions of this Chapter and the actions of the public official or employee were  
16          unreasonable or malicious, it may award the person who brought the enforcement  
17          proceeding or, if the enforcement proceeding was brought by the attorney general on  
18          the basis of a complaint, the person who filed the complaint any actual damages  
19          proven by him to have resulted from the actions of the public official or employee.  
20          Further, if the court finds that the actions of the public official or employee were  
21          unreasonable or malicious, it may award such person civil penalties not to exceed  
22          thirty thousand dollars per violation of the Chapter.

23          C. The provisions of this Section shall be not be exclusive and shall be in  
24          addition to any other applicable penalties or any other remedy or relief provided by  
25          law.

1        §345. Definitions2                As used in this Chapter:3                (1) "Prohibit" means to interfere with the physical operation of or recording  
4                by a recording device by threat, duress, coercion, direct order, arrest, detention, use  
5                of force, or deliberate obstruction.6                (2) "Public employee" means anyone who is employed by any agency or  
7                official of state government or any agency or official of any political subdivision of  
8                the state.9                (3) "Public official" means anyone who holds an elective or appointive office  
10               in state government or in any district or political subdivision of this state.11               (4) "Recording device" means a device that captures and records data or  
12               information, including without limitation a film camera, digital camera, electronic  
13               communication devices, tape recorder, electronic sound recorder, or any other type  
14               of digital recording media.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 279 Original

2017 Regular Session

Jordan

**Abstract:** Prohibits a public official or employee from: prohibiting a person from recording the activities of a public official or employee in the conduct of or while performing the duties of his public position, deleting data on a recording device, or confiscating a recording device except under certain circumstances.

Proposed law prohibits a public official or employee from:

- (1) Prohibiting a person from using a recording device to record the activities of a public official or employee in the conduct of or performing the duties of his public position in a place that is open to and accessible to the general public or any private property where the person is lawfully present unless the act of recording or the location of the person making the recording:
  - (a) Presents a risk to the physical safety of anyone present, not including the person making the recording.
  - (b) Constitutes an element of a criminal offense.
  - (c) Could reasonably be expected to lead to the infringement of copyrighted material.
- (2) Deleting any electronic data or any other information derived by recording from a recording device carried on or near the person without the express written permission

of the person owning or possessing the recording device or otherwise destroy information contained in the recording device.

- (3) Seizing or confiscating a recording device unless the recording device appears to be involved in the commission of a crime.

Proposed law specifies that it shall not be interpreted to allow a person to use a recording device to intrude upon the seclusion or solitude of another person or upon the other person's private affairs or concerns if the intrusion violates the person's reasonable expectation of privacy, including any violation of the person's privacy rights under the Health Insurance Portability and Accountability Act of 1996.

Proposed law further provides that it shall not affect the authority of a court of competent jurisdiction to issue binding orders or to regulate the absence, presence, or conduct of citizens occupying buildings or property under the jurisdiction of the court or the authority of a public body to adopt reasonable rules to maintain order during its meetings.

Proposed law provides that the attorney general shall enforce proposed law throughout the state and he may institute enforcement proceedings on his own initiative and shall institute proceedings upon a complaint filed with him by any person, unless he provides written reasons why the suit should not be filed, and provides that any person who has reason to believe that the provisions of proposed law have been violated may institute enforcement proceedings.

Proposed law provides that if the court finds that a public official or employee violated proposed law, it shall award the person who brought the enforcement proceeding reasonable attorney fees and other costs of litigation. Proposed law further provides that if the court finds that the actions of the public official or employee were unreasonable or malicious, it may award the person who brought the enforcement proceeding or, if the enforcement proceeding was brought by the attorney general on the basis of a complaint, the person who filed the complaint any actual damages proven by him to have resulted from the actions of the public official or employee, and further authorizes the court in such situations to award such person civil penalties not to exceed \$30,000 per violation.

Proposed law specifies that these remedies shall not be exclusive and shall be in addition to any other applicable penalties or any other remedy or relief provided by law.

Proposed law defines the terms "prohibit", "public employee", "public official", and "recording device" for its purposes.

(Adds R.S. 42:341-345)