

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 and 2902, 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 real property with the intent to conduct surveillance on the  
2 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 (A)(1) of this  
7 Section.

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

10 C. Each image that a person captures, possesses, discloses, displays,  
11 distributes, or otherwise uses in violation of Subsection A 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 real property or on or about an individual  
17 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 (5) With the consent of the individual who owns or lawfully occupies the  
13 real property captured in the image.

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

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

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

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

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

24 (i) A human fatality.

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

27 (iii) Any motor vehicle accident on a state highway or federal interstate  
28 or highway.

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

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

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

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

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

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

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

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

16           (10) For the purpose of fire suppression.

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

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

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

23           (14) If the image is captured by the owner or operator of an oil, gas,  
24           water, or other pipeline for the purpose of inspecting, maintaining, or repairing  
25           the pipeline or other related facilities.

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

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

1                   **(17) As authorized or permitted by the Federal Aviation Administration**  
2                   **for use in a motion picture, television, or similar production when the**  
3                   **production is authorized by the property owner and authorized by a state or**  
4                   **local permit agency, if authorization for the production by a state or local**  
5                   **permit agency is required.**

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

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

11                  **(2) As part of an operation, exercise, or mission of any branch of the**  
12                  **United States military.**

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

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

18                  **H.(1) Except as otherwise provided in Paragraph (2) of this Subsection,**  
19                  **an image or wireless data transmission captured in violation of this Section, or**  
20                  **an image or wireless data transmission captured by an unmanned aircraft that**  
21                  **was incidental to the lawful capturing of an image or wireless data**  
22                  **transmission:**

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

25                  **(b) Shall not be subject to disclosure, inspection, or copying under Title**  
26                  **44 of the Louisiana Revised Statutes of 1950.**

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

29                  **(2) An image or wireless data transmission as described in Paragraph (1)**

1 of this Subsection may be disclosed and used as evidence to prove a violation of  
2 this Section and is subject to discovery, subpoena, or other means of legal  
3 compulsion solely for that purpose.

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

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

9 J. Civil actions. (1) An owner or lessee of privately owned real property,  
10 or the sender or recipient of a wireless data transmission, may bring against a  
11 person who, in violation of this Section, captured an image of the property or  
12 the owner or lessee while on the property, or who captured a wireless data  
13 transmission in violation of this Section, respectively, an action to:

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

15 (b) Recover a civil penalty of:

16 (i) Five thousand dollars for all images or data captured in a single  
17 episode in violation of this Section.

18 (ii) Ten thousand dollars for disclosure, display, distribution, or other  
19 use of any images or wireless data transmission captured in a single occurrence  
20 in violation of this Section.

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

24 (2) For purposes of recovering the civil penalty or actual damages under  
25 this Subsection, all owners of a parcel of real property are considered to be a  
26 single owner and all lessors of a parcel of real property are considered to be a  
27 single lessor.

28 (3) In addition to any civil penalties authorized under this Subsection,  
29 the court shall award court costs and reasonable attorney fees to the prevailing

1 party.

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

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

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

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

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

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

14 CHAPTER 36. UNMANNED AIRCRAFT

15 §2901. Unmanned aircraft; rules for use by law enforcement agencies

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

19 §2902. Reporting by law enforcement agencies

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

25 (1) The number of times an unmanned aircraft was used, organized by  
26 date, time, location, and the types of incidents and justifications for the use of  
27 the unmanned aircraft.

28 (2) The number of criminal investigations aided by the use of an  
29 unmanned aircraft and a description of how the unmanned aircraft aided each

1           investigation.

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

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

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

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

13                   (1) Retain the report for public inspection.

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

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

20                  Section 4. This Act shall become effective upon signature by the governor or, if not  
21                  signed by the governor, upon expiration of the time for bills to become law without signature  
22                  by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If  
23                  vetoed by the governor and subsequently approved by the legislature, this Act shall become  
24                  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) 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.