

SENATE BILL No. 409

By Committee on Federal and State Affairs

2-18

1 AN ACT concerning unmanned vehicles; relating to breach of privacy; use
2 of images; search warrants; law enforcement; civil penalties and
3 liability; amending K.S.A. 2013 Supp. 21-6101 and repealing the
4 existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. Sections 1 through 9, and amendments thereto, shall
8 be known as the Kansas unmanned vehicle act.

9 New Sec. 2. The following definitions shall apply to the Kansas
10 unmanned vehicle act, unless the context clearly requires a different
11 meaning:

12 (a) "Judicial officer" means a judge, magistrate or other person
13 authorized to issue a search warrant pursuant to K.S.A. 22-2502, and
14 amendments thereto.

15 (b) "Law enforcement agency" means any state, municipal or other
16 public agency whose duties include the prevention or detection of crime
17 and the enforcement of the criminal or traffic laws of this state or any
18 municipality. "Law enforcement agency" includes, but is not limited to,
19 any state investigative agency, city police department, county sheriff's
20 department, county law enforcement department as defined in K.S.A. 19-
21 4401, and amendments thereto, or any law enforcement agency established
22 pursuant to the consolidated city-county powers in K.S.A. 12-345, and
23 amendments thereto.

24 (c) "Law enforcement officer" means any person who is employed or
25 contracted by a law enforcement agency and is empowered by the laws of
26 this state to conduct investigations or to make arrests.

27 (d) "Municipality" means a city, county, township, fire district or any
28 other political and taxing subdivision in this state.

29 (e) "Person" means any individual, partnership, association, joint
30 stock company, trust or corporation.

31 (f) "Personal information" means any information that:

32 (1) Describes, locates or indexes anything about a person including,
33 but not limited to, such person's social security number, driver's license
34 number, agency-issued identification number, student identification
35 number, real or personal property holdings derived from tax returns,
36 education, financial transactions, medical history, ancestry, religion,

1 political ideology or criminal or employment record;

2 (2) affords a basis for inferring personal characteristics, such as finger
3 and voice prints, photographs or things done by or to such person; and the
4 record of such person's presence, registration or membership in an
5 organization or activity or admission to an institution; or

6 (3) describes, locates or indexes anything about a person including,
7 but not limited to, intellectual property, trade secrets or proprietary or
8 operational information.

9 (g) "Public unmanned vehicle system" means an unmanned vehicle
10 system operated by a law enforcement agency or at the direction of or
11 under the control of a law enforcement agency.

12 (h) "Sensing device" means a device capable of acquiring data or
13 information from its surroundings including, but not limited to, cameras
14 using visible, ultraviolet or infrared frequencies, microphones, thermal
15 detectors, chemical detectors, radiation gauges and wireless receivers in
16 any frequency.

17 (i) "State agency" means any state office or officer, department,
18 board, commission, institution, bureau or any agency, division or unit
19 within any office, department, board, commission or other state authority.

20 (j) "Unmanned vehicle" means a vehicle, including, but not limited
21 to, an aircraft, that is operated without the possibility of human
22 intervention from within or on such vehicle.

23 (k) "Unmanned vehicle system" means an unmanned vehicle and
24 associated elements, including, but not limited to, communication links,
25 sensing devices and components that control such unmanned vehicle that
26 are required for the operator in command to operate safely and efficiently.

27 New Sec. 3. (a) (1) Except as otherwise specifically provided in the
28 Kansas unmanned vehicle act, it shall be unlawful to: (A) Operate a public
29 unmanned vehicle system; or (B) collect or disclose personal information
30 about any person acquired through the operation of any unmanned vehicle
31 system.

32 (2) It shall not be unlawful to operate an unmanned vehicle system on
33 the land of another, or in the air space above such land, if the landowner or
34 person in possession of such land has given permission for such operation.

35 (b) All operations of an unmanned vehicle system or disclosure of
36 personal information about any person acquired through the operation of
37 an unmanned vehicle system shall be conducted in such a way as to
38 minimize the collection and disclosure of personal information obtained in
39 violation of the Kansas unmanned vehicle act.

40 (c) (1) Except no unmanned vehicle shall be equipped with or carry
41 any weapon, device, instrument, material, or substance that is used for, or
42 is readily capable of, causing death or serious bodily injury.

43 (2) The provisions of this subsection shall not apply to any

1 agricultural chemicals, as defined in K.S.A. 2-2202, and amendments
2 thereto, if an unmanned vehicle system is equipped with such chemicals
3 for use on land, or in the air space above such land, with the permission of
4 the owner or person in possession of such land.

5 (d) Violation of any provision of the Kansas unmanned vehicle act or
6 subsection (a)(8) or (a)(9) of K.S.A. 2013 Supp. 21-6101, and amendments
7 thereto, shall be punishable by a civil penalty of not more than \$10,000 for
8 each violation. In the case of a continuing violation, each day such
9 violation continues may be deemed a separate violation. Such civil penalty
10 may be assessed in addition to any other penalty provided by law.

11 New Sec. 4. (a) No state agency shall procure a public unmanned
12 vehicle system without the express approval of the legislature.

13 (b) No municipal law enforcement agency shall procure a public
14 unmanned vehicle system without the approval of the governing body of
15 such municipality.

16 (1) The governing body of any municipality permitting the use of
17 public unmanned vehicle systems shall publish and make available to the
18 public any written policies and procedures for the use of public unmanned
19 vehicle systems by each law enforcement agency of such municipality.

20 (2) The governing body of any municipality permitting the use of
21 public unmanned vehicle systems shall require each law enforcement
22 agency operating a public unmanned vehicle system to maintain records of
23 each use of a public unmanned vehicle system, including the date, time,
24 location, target of data collection, type of data collected, reason for such
25 use and the identity of the operator of such public unmanned vehicle
26 system and the person who authorized such use.

27 (3) (A) The governing body of any municipality permitting the use of
28 a public unmanned vehicle system shall conduct an annual comprehensive
29 audit on the operation of each such public unmanned vehicle system,
30 including the law enforcement log book, corresponding emergency
31 telephone calls, warrants and other documentation of the reason for such
32 use. Such audit shall be publicly available and shall include:

33 (i) The number of crime investigations aided by the use and how the
34 use was helpful to the investigation;

35 (ii) the frequency and type of data collected for individuals or areas
36 other than targets;

37 (iii) the total cost of the public unmanned vehicle system; and

38 (iv) any additional information and analysis the governing body
39 deems useful.

40 (B) Upon completion of the audit, the governing body shall review
41 the use of public unmanned vehicle systems and consider both the benefits
42 and risks to privacy before authorizing the continued operation of a public
43 unmanned vehicle system in such municipality.

1 New Sec. 5. (a) Except as provided in subsection (b), a public
2 unmanned vehicle system shall only be operated pursuant to a search
3 warrant issued by a court of competent jurisdiction as provided in K.S.A.
4 22-2502 through 22-2505, and amendments thereto, or as otherwise
5 provided in this section.

6 (b) (1) A law enforcement officer may operate a public unmanned
7 vehicle system and disclose personal information from such operation if:

8 (A) Such officer reasonably determines that an emergency situation
9 exists that involves immediate danger of death or serious physical injury to
10 any person;

11 (B) such emergency situation requires operation of a public
12 unmanned vehicle system before a warrant authorizing such interception
13 can, with due diligence, be obtained;

14 (C) there are grounds upon which such a warrant could be entered to
15 authorize such operation; and

16 (D) an application for a warrant authorizing such operation is made
17 within 48 hours after the operation begins.

18 (2) In the absence of a warrant, an operation of a public unmanned
19 vehicle system pursuant to subsection (b) shall immediately terminate
20 when the personal information sought is obtained or when the application
21 for the warrant is denied, whichever is earlier. In the event such
22 application is denied, the personal information obtained from the operation
23 shall be treated as having been obtained in violation of the Kansas
24 unmanned vehicle act.

25 (c) Whenever any personal information from a public unmanned
26 vehicle system has been acquired in violation of the Kansas unmanned
27 vehicle act, any part of such personal information and evidence derived
28 therefrom shall be inadmissible in any trial, hearing or other proceeding in
29 or before any court, grand jury, department, officer, agency, regulatory
30 body, legislative committee or other authority of the state or a political
31 subdivision thereof. Such personal information shall not be disclosed for
32 any purpose and shall be deleted as soon as possible, and in no event later
33 than 24 hours after the collection of such information.

34 New Sec. 6. By November 1 of each year, any judicial officer who
35 has received an application for a search warrant to operate a public
36 unmanned vehicle system during that year shall report to the chief justice
37 of the supreme court the following information for each such application:

38 (a) The fact that a warrant was applied for;

39 (b) the fact that the warrant was granted as applied for, was modified,
40 or was denied;

41 (c) the period of time for the use of such public unmanned vehicle
42 system authorized by such warrant;

43 (d) the offense or purpose specified in the petition and the probable

1 cause giving rise to such warrant; and

2 (e) the identity of the applying law enforcement officer, the agency
3 making the application and the judicial officer issuing such warrant.

4 New Sec. 7. By November 1 of each year, any law enforcement
5 agency who applied for a search warrant for the use of a public unmanned
6 vehicle system shall report to the Kansas bureau of investigation the
7 following information for each such application:

8 (a) The fact that a warrant was applied for;

9 (b) the fact that the warrant was granted as applied for, was modified
10 or was denied;

11 (c) the period of time for the use of such public unmanned vehicle
12 system authorized by such warrant;

13 (d) the offense or purpose specified in the petition and the probable
14 cause giving rise to such warrant;

15 (e) the identity of the applying law enforcement officer, the agency
16 making the application and the judicial officer authorizing the petition;

17 (f) the general description of the information gathered from the use of
18 the public unmanned vehicle system under the search warrant, including:

19 (1) The approximate nature and frequency of incriminating conduct
20 gathered;

21 (2) the approximate number of persons upon whom information was
22 gathered; and

23 (3) the approximate nature, amount and cost of the manpower and
24 other resources used in the collection;

25 (g) the number of arrests resulting from information gathered under
26 such search warrant or extension and the offenses for which arrests were
27 made;

28 (h) the number of trials resulting from such information;

29 (i) the number of motions to suppress made with respect to such
30 information and the number of such motions granted or denied; and

31 (j) the number of convictions resulting from such information, the
32 offenses for which the convictions were obtained and a general assessment
33 of the importance of such information in securing such convictions.

34 New Sec. 8. By January 1 of each year, the chief justice of the
35 supreme court and the director of the Kansas bureau of investigation shall
36 transmit to the legislature a full and complete report concerning the
37 number of applications for search warrants authorizing the operation of a
38 public unmanned vehicle system or disclosure of information from the
39 operation of a public unmanned vehicle system pursuant to the Kansas
40 unmanned vehicle act. Such report shall include a summary and analysis
41 of all of the data required to be filed with the supreme court pursuant to
42 section 6, and amendments thereto, and the Kansas bureau of investigation
43 pursuant to section 7, and amendments thereto.

1 New Sec. 9. Any person aggrieved by a person whose actions violate
2 the provisions of the Kansas unmanned vehicle act or K.S.A. 2013 Supp.
3 21-6101, and amendments thereto, shall have a civil cause of action
4 against such person and shall be entitled to recover:

- 5 (a) Actual damages;
- 6 (b) punitive damages;
- 7 (c) equitable relief; and
- 8 (d) reasonable attorney fees.

9 Sec. 10. K.S.A. 2013 Supp. 21-6101 is hereby amended to read as
10 follows: 21-6101. (a) Breach of privacy is knowingly and without lawful
11 authority:

12 (1) Intercepting, without the consent of the sender or receiver, a
13 message by telephone, telegraph, letter or other means of private
14 communication;

15 (2) divulging, without the consent of the sender or receiver, the
16 existence or contents of such message if such person knows that the
17 message was illegally intercepted, or if such person illegally learned of the
18 message in the course of employment with an agency in transmitting it;

19 (3) entering with intent to listen surreptitiously to private
20 conversations in a private place or to observe the personal conduct of any
21 other person or persons entitled to privacy therein;

22 (4) installing or using outside or inside a private place any device for
23 hearing, recording, amplifying or broadcasting sounds originating in such
24 place, which sounds would not ordinarily be audible or comprehensible
25 without the use of such device, without the consent of the person or
26 persons entitled to privacy therein;

27 (5) installing or using any device or equipment for the interception of
28 any telephone, telegraph or other wire or wireless communication without
29 the consent of the person in possession or control of the facilities for such
30 communication;

31 (6) installing or using a concealed camcorder, motion picture camera
32 or photographic camera of any type, to secretly videotape, film,
33 photograph or record by electronic or other means, another, identifiable
34 person under or through the clothing being worn by that other person or
35 another, identifiable person who is nude or in a state of undress, for the
36 purpose of viewing the body of, or the undergarments worn by, that other
37 person, without the consent or knowledge of that other person, with the
38 intent to invade the privacy of that other person, under circumstances in
39 which the other person has a reasonable expectation of privacy; ~~or~~

40 (7) disseminating or permitting the dissemination of any videotape,
41 photograph, film or image obtained in violation of subsection (a)(6)-;

42 (8) *except as authorized by the Kansas unmanned vehicle act, using*
43 *an unmanned vehicle system to collect any personal information about a*

1 *person while such person is in a private place; or*

2 *(9) disseminating, disclosing or permitting the dissemination or*
3 *disclosure of personal information about a person collected pursuant to*
4 *subsection (a)(8).*

5 (b) Breach of privacy as defined in:

6 (1) Subsection (a)(1) through (a)(5) is a class A nonperson
7 misdemeanor;

8 (2) subsection (a)(6) is a severity level 8, person felony; ~~and~~

9 (3) subsection (a)(7) is a severity level 5, person felony; *and*

10 *(4) subsection (a)(8) or (a)(9) is a severity level 8, nonperson felony.*

11 (c) Subsection (a)(1) shall not apply to messages overheard through a
12 regularly installed instrument on a telephone party line or on an extension.

13 (d) The provisions of this section shall not apply to an operator of a
14 switchboard, or any officer, employee or agent of any public utility
15 providing telephone communications service, whose facilities are used in
16 the transmission of a communication, to intercept, disclose or use that
17 communication in the normal course of employment while engaged in any
18 activity which is incident to the rendition of public utility service or to the
19 protection of the rights of property of such public utility.

20 (e) As used in this section;:

21 (1) *"Personal information" has the same meaning as defined in*
22 *section 2, and amendments thereto;*

23 (2) *"private place" means a place where one may reasonably expect*
24 *to be safe from uninvited intrusion or surveillance; and*

25 (3) *"unmanned vehicle system" has the same meaning as defined in*
26 *section 2, and amendments thereto, and includes a public unmanned*
27 *vehicle system as defined in section 2, and amendments thereto.*

28 Sec. 11. K.S.A. 2013 Supp. 21-6101 is hereby repealed.

29 Sec. 12. This act shall take effect and be in force from and after its
30 publication in the statute book.