

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, *captures, prints* or indexes anything about a
33 person including, but not limited to, such person's *image*, social security
34 number, driver's license number, agency-issued identification number,
35 student identification number, real or personal property holdings derived
36 from tax returns, education, financial transactions, medical history,

1 ancestry, religion, 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, *captures, prints* or indexes anything about a
7 person including, but not limited to, intellectual property, trade secrets or
8 proprietary or operational information; *or*

9 (4) *describes, locates, captures, prints or indexes anything about*
10 *real property or tangible and intangible personal property.*

11 (g) *"Public land" means any land within the boundaries of the*
12 *state which is owned by or subject to the control of the state or any*
13 *political subdivision thereof and is not owned or controlled by any*
14 *private person.*

15 ~~(g)~~ (h) "Public unmanned vehicle system" means an unmanned
16 vehicle system operated by a law enforcement agency or at the direction of
17 or under the control of a law enforcement agency.

18 ~~(h)~~ (i) "Sensing device" means a device capable of acquiring data or
19 information from its surroundings including, but not limited to, cameras
20 using visible, ultraviolet or infrared frequencies, microphones, thermal
21 detectors, chemical detectors, radiation gauges and wireless receivers in
22 any frequency.

23 ~~(i)~~ "State agency" means ~~any state office or officer, department,~~
24 ~~board, commission, institution, bureau or any agency, division or unit~~
25 ~~within any office, department, board, commission or other state authority.~~

26 (j) "Unmanned vehicle" means a vehicle, including, but not limited to,
27 an aircraft, that is operated without the possibility of human
28 intervention from within or on such vehicle. *"Unmanned vehicle" shall*
29 *not include satellites.*

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

34 New Sec. 3. (a) (1) Except as otherwise specifically provided in the
35 Kansas unmanned vehicle act, it shall be unlawful to: (A) Operate a public
36 *an* unmanned vehicle system; or (B) collect or disclose personal
37 information about any person acquired through the operation of any
38 unmanned vehicle system.

39 (2) It shall not be unlawful *nor a violation of this act* to operate an
40 unmanned vehicle system on:

41 (A) *Public land, or in the air space above such public land;*

42 (B) *land owned by, or in the lawful possession of, the person*
43 *operating such unmanned vehicle system, or in the air space above such*

1 **land;**

2 (C) the land of another, or in the air space above such land, if the
3 landowner or person in **lawful** possession of such land has given
4 permission for such operation; **or**

5 (D) **the land of another, or in the airspace above such land, if the**
6 **person operating such unmanned vehicle system has a property interest**
7 **in such land, including, but not limited to, an easement or right-of-way**
8 **on such land.**

9 (3) **Except as provided further, it shall not be unlawful nor a**
10 **violation of this act if such operation only incidentally operates over or**
11 **collects data from a neighboring property by nature of the process or**
12 **technology utilized. Any intentional disclosure of such data collected**
13 **from a neighboring property which causes harm to the owner or person**
14 **in possession of such neighboring property shall be unlawful and a**
15 **violation of this act.**

16 (b) All operations of an unmanned vehicle system or disclosure of
17 personal information about any person acquired through the operation of
18 an unmanned vehicle system shall be conducted in such a way as to
19 minimize the collection and disclosure of personal information obtained in
20 violation of the Kansas unmanned vehicle act.

21 (c) (1) Except **as provided in subsection (c)(2)**, no unmanned vehicle
22 shall be equipped with or carry any weapon, device, instrument, material,
23 or substance that is used for, or is readily capable of, causing death or
24 serious bodily injury.

25 (2) The provisions of this subsection shall not apply to any
26 agricultural chemicals, as defined in K.S.A. 2-2202, and amendments
27 thereto, if an unmanned vehicle system is equipped with such chemicals
28 for use on land, or in the air space above such land, with the permission of
29 the owner or person in possession of such land.

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

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

38 ~~(b) No municipal law enforcement agency shall procure a public~~
39 ~~unmanned vehicle system without the approval of the governing body of~~
40 ~~such municipality.~~

41 ~~(+)~~ (b) The governing body of any municipality permitting the use of
42 public unmanned vehicle systems shall publish and make available to the
43 public any written policies and procedures for the use of public unmanned

1 vehicle systems by each law enforcement agency of such municipality.

2 (2) (c) The governing body of any municipality permitting the use of
3 public unmanned vehicle systems shall require each law enforcement
4 agency operating a public unmanned vehicle system to maintain records of
5 each use of a public unmanned vehicle system, including the date, time,
6 location, target of data collection, type of data collected, reason for such
7 use and the identity of the operator of such public unmanned vehicle
8 system and the person who authorized such use.

9 (3)-(A) (d) (I) The governing body of any municipality permitting the
10 use of a public unmanned vehicle system shall conduct an annual
11 comprehensive audit on the operation of each such public unmanned
12 vehicle system, including the law enforcement log book, corresponding
13 emergency telephone calls, warrants and other documentation of the
14 reason for such use. Such audit shall be publicly available and shall
15 include:

16 (i) (A) The number of crime investigations aided by the use and how
17 the use was helpful to the investigation;

18 (ii) (B) the frequency and type of data collected for individuals or
19 areas other than targets;

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

21 (iv) (D) any additional information and analysis the governing body
22 deems useful.

23 (B) (2) Upon completion of the audit, the governing body shall
24 review the use of public unmanned vehicle systems and consider both the
25 benefits and risks to privacy before authorizing the continued operation of
26 a public unmanned vehicle system in such municipality.

27 New Sec. 5. (a) Except as provided in subsection (b), ~~a public~~
28 ~~unmanned vehicle system shall only be operated pursuant to a search~~
29 ~~warrant issued by a court of competent jurisdiction as provided in K.S.A.~~
30 ~~22-2502 through 22-2505, and amendments thereto, or as otherwise~~
31 ~~provided in this section.~~

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

34 (A) ~~Such officer reasonably determines that an emergency situation~~
35 ~~exists that involves immediate danger of death or serious physical injury to~~
36 ~~any person;~~

37 (B) ~~such emergency situation requires operation of a public~~
38 ~~unmanned vehicle system before a warrant authorizing such interception~~
39 ~~can, with due diligence, be obtained;~~

40 (C) ~~there are grounds upon which such a warrant could be entered to~~
41 ~~authorize such operation; and~~

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

1 (2) ~~In the absence of a warrant, an operation of a public unmanned~~
2 ~~vehicle system pursuant to subsection (b) shall immediately terminate~~
3 ~~when the personal information sought is obtained or when the application~~
4 ~~for the warrant is denied, whichever is earlier. In the event such~~
5 ~~application is denied, the personal information obtained from the operation~~
6 ~~shall be treated as having been obtained in violation of the Kansas~~
7 ~~unmanned vehicle act or (c), no law enforcement agency shall use an~~
8 ~~unmanned vehicle system to gather evidence or other information.~~

9 ***(b) The use of an unmanned vehicle system by a law enforcement***
10 ***agency to gather evidence or information that is not otherwise lawfully***
11 ***accessible in plain view shall constitute a search. Any law enforcement***
12 ***agency that uses an unmanned vehicle system to gather evidence or***
13 ***obtain information shall comply in all respects with the fourth***
14 ***amendment to the constitution of the United States and section 15 of the***
15 ***Kansas bill of rights.***

16 ***(c) Any personal information obtained by a law enforcement***
17 ***agency with the use of an unmanned vehicle or an unmanned vehicle***
18 ***system shall not be subject to the Kansas open records act, K.S.A. 45-215***
19 ***et seq., and amendments thereto.***

20 ***(d) Nothing in this act shall prohibit the use of an unmanned***
21 ***vehicle system by a law enforcement agency:***

22 ***(1) If the law enforcement agency first obtains a search warrant***
23 ***pursuant to K.S.A. 22-2502 through 22-2505, and amendments thereto;***

24 ***(2) if the law enforcement agency possesses reasonable suspicion***
25 ***that, under particular circumstances, swift action is necessary to***
26 ***prevent:***

27 ***(A) Injury to a person;***

28 ***(B) imminent danger to life; or***

29 ***(C) property loss or damage;***

30 ***(3) to counter a risk of a terrorist attack by a specific individual or***
31 ***organization if the secretary of homeland security determines that***
32 ***credible intelligence indicates such a risk;***

33 ***(4) to provide continuous coverage when law enforcement is***
34 ***searching for a fugitive or escapee or is monitoring a hostage or***
35 ***barricaded subject situation;***

36 ***(5) to provide more expansive coverage for the purpose of***
37 ***searching for a missing person or an identified pattern of criminal***
38 ***activity; or***

39 ***(6) to address other exigent circumstances when probable cause***
40 ***exists that a crime is being committed, has been committed or is about to***
41 ***be committed.***

42 ***(e) Whenever any personal information from a public unmanned***
43 ***vehicle system has been acquired in violation of the Kansas unmanned***

1 vehicle act, any part of such personal information and evidence derived
2 therefrom shall be inadmissible in any trial, hearing or other proceeding in
3 or before any court, grand jury, department, officer, agency, regulatory
4 body, legislative committee or other authority of the state or a political
5 subdivision thereof. Such personal information shall not be disclosed for
6 any purpose and shall be deleted as soon as possible, and in no event later
7 than 24 hours after the collection of such information.

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

- 12 (a) The fact that a warrant was applied for;
- 13 (b) the fact that the warrant was granted as applied for, was modified,
14 or was denied;
- 15 (c) the period of time for the use of such public unmanned vehicle
16 system authorized by such warrant;
- 17 (d) the offense or purpose specified in the petition and the probable
18 cause giving rise to such warrant; and
- 19 (e) the identity of the applying law enforcement officer, the agency
20 making the application and the judicial officer issuing such warrant.

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

- 25 (a) The fact that a warrant was applied for;
- 26 (b) the fact that the warrant was granted as applied for, was modified
27 or was denied;
- 28 (c) the period of time for the use of such public unmanned vehicle
29 system authorized by such warrant;
- 30 (d) the offense or purpose specified in the petition and the probable
31 cause giving rise to such warrant;
- 32 (e) the identity of the applying law enforcement officer, the agency
33 making the application and the judicial officer authorizing the petition;
- 34 (f) the general description of the information gathered from the use of
35 the public unmanned vehicle system under the search warrant, including:
 - 36 (1) The approximate nature and frequency of incriminating conduct
37 gathered;
 - 38 (2) the approximate number of persons upon whom information was
39 gathered; and
 - 40 (3) the approximate nature, amount and cost of the manpower and
41 other resources used in the collection;
- 42 (g) the number of arrests resulting from information gathered under
43 such search warrant or extension and the offenses for which arrests were

1 made;

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

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

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

8 New Sec. 8. By January 1 of each year, the chief justice of the
9 supreme court and the director of the Kansas bureau of investigation shall
10 transmit to the legislature a full and complete report concerning the
11 number of applications for search warrants authorizing the operation of a
12 public unmanned vehicle system or disclosure of information from the
13 operation of a public unmanned vehicle system pursuant to the Kansas
14 unmanned vehicle act. Such report shall include a summary and analysis
15 of all of the data required to be filed with the supreme court pursuant to
16 section 6, and amendments thereto, and the Kansas bureau of investigation
17 pursuant to section 7, and amendments thereto.

18 New Sec. 9. Any person aggrieved by a person whose actions violate
19 the provisions of the Kansas unmanned vehicle act or K.S.A. 2013 Supp.
20 21-6101, and amendments thereto, shall have a civil cause of action
21 against such person and shall be entitled to recover:

22 (a) Actual damages;

23 (b) punitive damages;

24 (c) equitable relief; and

25 (d) reasonable attorney fees.

26 ***New Sec. 10. Nothing in the Kansas unmanned vehicle act shall***
27 ***limit the use of a robot designed to handle suspected explosive devices or***
28 ***other hazardous materials, or used in law enforcement tactical***
29 ***operations where there is a reasonable belief that a human law***
30 ***enforcement response would pose an immediate threat to the safety of***
31 ***any person.***

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

35 (1) Intercepting, without the ***written*** consent of the sender or receiver,
36 a message by telephone, telegraph, letter or other means of private
37 communication;

38 (2) divulging, without the ***written*** consent of the sender or receiver,
39 the existence or contents of such message if such person knows that the
40 message was illegally intercepted, or if such person illegally learned of the
41 message in the course of employment with an agency in transmitting it;

42 (3) entering with intent to listen surreptitiously to private
43 conversations in a private place or to observe the personal conduct of any

1 other person or persons entitled to privacy therein;

2 (4) installing or using outside or inside a private place any device for
3 hearing, recording, amplifying or broadcasting sounds originating in such
4 place, which sounds would not ordinarily be audible or comprehensible
5 without the use of such device, without the **written** consent of the person
6 or persons entitled to privacy therein;

7 (5) installing or using any device or equipment for the interception of
8 any telephone, telegraph or other wire or wireless communication without
9 the **written** consent of the person in possession or control of the facilities
10 for such communication;

11 (6) installing or using a concealed camcorder, motion picture camera
12 or photographic camera of any type, to secretly videotape, film,
13 photograph or record by electronic or other means, another, identifiable
14 person under or through the clothing being worn by that other person or
15 another, identifiable person who is nude or in a state of undress, for the
16 purpose of viewing the body of, or the undergarments worn by, that other
17 person, without the ~~consent or knowledge~~ **or written consent** of that other
18 person, with the intent to invade the privacy of that other person, under
19 circumstances in which the other person has a reasonable expectation of
20 privacy; ~~or~~

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

23 (8) *except as authorized by the Kansas unmanned vehicle act, using*
24 *an unmanned vehicle system to collect any personal information about a*
25 *person while such person is in a private place; or*

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

29 (b) Breach of privacy as defined in:

30 (1) Subsection (a)(1) through (a)(5) is a class A nonperson
31 misdemeanor;

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

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

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

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

37 (d) The provisions of this section shall not apply to an operator of a
38 switchboard, or any officer, employee or agent of any public utility
39 providing telephone communications service, whose facilities are used in
40 the transmission of a communication, to intercept, disclose or use that
41 communication in the normal course of employment while engaged in any
42 activity which is incident to the rendition of public utility service or to the
43 protection of the rights of property of such public utility.

1 (e) As used in this section;

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

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

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

9 ~~Sec. 12.~~ **12.** K.S.A. 2013 Supp. 21-6101 is hereby repealed.

10 ~~Sec. 13.~~ **13.** This act shall take effect and be in force from and after
11 its publication in the statute book.