

SENATE BILL 1016

By Pody

AN ACT to amend Tennessee Code Annotated, Title 39,
relative to freedom from unwanted surveillance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-609, is amended by deleting the section and substituting the following:

(a) This section is known and may be cited as the "Freedom from Unwarranted Surveillance Act of 2021."

(b) As used in this section:

(1) "Drone":

(A) Means a powered, aerial vehicle that:

(i) Does not carry a human operator and is operated without the possibility of direct human intervention from within or on the aircraft;

(ii) Uses aerodynamic forces to provide vehicle lift; and

(iii) Can fly autonomously or be piloted remotely; and

(B) Includes permanently or temporarily mounted audio or video recording devices owned, leased, or maintained by a law enforcement agency, excluding devices that are owned, operated, or maintained by law enforcement to monitor the interior of any buildings owned, operated, or maintained by law enforcement; and

(2) "Law enforcement agency" means a lawfully established state or local public agency that:

(A) Is responsible for the prevention and detection of crime;

(B) Is responsible for local government code supervision or enforcement;

(C) Is responsible for the enforcement of penal, traffic, regulatory, game, or controlled substance laws; or

(D) Has the authority to issue or serve civil summons, criminal warrants, or make arrests.

(c) The use of a drone, or other substantially similar device, by a law enforcement agency to search for and collect evidence or obtain information or other data constitutes a search and is subject to Article I, Section 7, of the Tennessee Constitution. The use of a drone to conduct a search is prohibited unless authorized by and used in compliance with this subsection (c) or subsection (d). A drone may be used for such purposes if:

(1) Used in compliance and consistent with applicable federal aviation administration rules, exemptions, or other authorizations, but only to the extent that such federal enactments regulate the operation of drones for other than law enforcement purposes;

(2) The agency first obtains a search warrant signed by a judge authorizing the use of a drone; and

(3) The drone is at all times identifiable with flashing blue strobes which are visible from the ground without aid of magnification lenses and emits a continuous warning siren that is audible from the ground without aid of magnification hearing assistance.

(d) A drone, or other substantially similar device, may be used for the purposes described in subsection (c) without a search warrant if used:

(1) In compliance and consistent with applicable federal aviation administration rules, exemptions, or other authorizations enactments regulate the operation of drones for other than law enforcement purposes; and

(2)

(A) To prevent imminent danger to life where there is reasonable suspicion that, under particular circumstances, immediate action is needed. However, the danger must first be presented to a magistrate or judge on a sworn affidavit of complaint and the magistrate or judge must make an express finding that there is an imminent danger to life and immediate action is needed;

(B) To provide continuous aerial coverage when law enforcement is searching for a fugitive or escapee or is monitoring a hostage situation;

(C) To provide more expansive aerial coverage when deployed for the purpose of searching for a missing person;

(D) To investigate motor vehicle accidents that occur within the traffic right-of-way or an area open to the public; or

(E) At the scene of a fire investigation.

(e) Evidenced gathered pursuant to subdivisions (d)(2)(B)-(E) shall not be used or available to law enforcement for any other investigation or purpose.

(f)

(1) Any law enforcement agency that uses a drone, or other substantially similar device, to collect evidence or obtain information or other data shall comply in all respects with the Fourth Amendment to the Constitution of the United States and Article I, Section 7, of the Constitution of Tennessee.

(2) Any evidence, information, or other data collected or obtained by use of a drone:

(A) Must be deleted within three (3) business days of collection unless the evidence is directly relevant to both the lawful reason the drone was being used and to an ongoing investigation or criminal prosecution based on the operative facts given by law enforcement to a magistrate or judge as the basis for obtaining the search warrant. If the evidence, information, or other data collected or obtained is directly relevant to both, the evidence must be retained and deleted by the collecting law enforcement agency in accordance with the same criteria, policies, and procedures used by the agency for evidence collected by methods other than a drone;

(B) Is not admissible as evidence in a criminal prosecution in any court of law in this state if it was collected or obtained in violation of this section; and

(C) Shall not be used as probable cause to obtain a search or arrest warrant or to establish reasonable suspicion to detain a person or vehicle if evidence, information, or other data was collected or obtained that was, at the time of collection, unrelated to and discovered only because of the lawful reason the drone was being used.

(g)

(1) Any interested party may file an action in a court of competent jurisdiction against the law enforcement agency and the agency's chief law enforcement official for:

(A) Declaratory and injunctive relief;

(B) Destruction of any evidence;

(C) Disclosure of all law enforcement acts related to such use of evidence; and

(D) Damages, as provided in subsection (i).

(h) As used in subsection (g), an "interested party" means:

(1) The party is an individual or entity that:

(A) Lawfully resides within the United States and was in this state at the time of the alleged violation;

(B) Was in the area subject to such drone use or monitoring at or near the time of such use; or

(C) Is planning to be in an area to attend an event that is or may be subject to a violation of this section by law enforcement; or

(2) The party is a membership organization that has two (2) or more members who are residents of this state and that seeks declaratory or injunctive relief based on a violation of this section.

(i) A prevailing plaintiff in an action under subsection (g) is entitled to recover from the law enforcement agency the following:

(1) The greater of:

(A) Actual damages, including consequential damages, attributable to violation of this section; or

(B) Three (3) times the plaintiff's attorney fees;

(2) Court costs, including fees; and

(3) Reasonable attorney fees; provided, that attorney fees shall not be awarded under this subdivision (i)(3) if the plaintiff recovers under subdivision (i)(1)(B).

SECTION 2. This act takes effect July 1, 2021, the public welfare requiring it.