

House Bill 846

By: Representatives Geisinger of the 48th, McCall of the 33rd, Pruett of the 149th, Martin of the 49th, Taylor of the 79th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
2 relating to invasions of privacy, so as to provide for a definition; to provide for the lawful use
3 of unmanned aircraft; to prohibit the capturing of certain images by unmanned aircraft; to
4 prohibit the possession, disclosure, display, distribution, or other use of such improperly
5 captured images; to provide for penalties; to provide for defenses to prosecution; to restrict
6 the use of such images; to provide for civil actions for violations; to provide for rulemaking
7 authority for the Department of Public Safety for law enforcement use of such unmanned
8 aircraft; to provide for certain reports; to provide for related matters; to provide for an
9 effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
13 invasions of privacy, is amended by adding a new part to read as follows:

14 "Part 3

15 16-11-90.

16 As used in this part, the term 'image' means any capturing of sound waves; thermal,
17 infrared, ultraviolet, visible light, or other electromagnetic waves; odor; or other conditions
18 existing on or about real property in this state or an individual located on such property.

19 16-11-91.

20 (a) It shall be lawful to capture an image using an unmanned aircraft in this state:

21 (1) For purposes of professional or scholarly research and development by a person
22 acting on behalf of an institution of higher education in this state, including a person who:

23 (A) Is a professor, employee, or student of the institution; or

- 24 (B) Is under contract with or otherwise acting under the direction or on behalf of the
25 institution;
- 26 (2) In airspace designated as a test site or range authorized by the Federal Aviation
27 Administration for the purpose of integrating unmanned aircraft systems into the national
28 airspace;
- 29 (3) As part of an operation, exercise, or mission of any branch of the United States
30 military;
- 31 (4) If the image is captured by a satellite for the purpose of mapping;
- 32 (5) If the image is captured by or for an electric or natural gas utility:
- 33 (A) For operations and maintenance of utility facilities for the purpose of maintaining
34 utility system reliability and integrity;
- 35 (B) For inspecting utility facilities to determine repair, maintenance, or replacement
36 needs during and after construction of such facilities;
- 37 (C) For assessing vegetation growth for the purpose of maintaining clearances on
38 utility easements; and
- 39 (D) For utility facility routing and siting for the purpose of providing utility service;
- 40 (6) With the consent of the individual who owns or lawfully occupies the real property
41 captured in the image;
- 42 (7) Pursuant to a valid search or arrest warrant;
- 43 (8) If the image is captured by a law enforcement authority or a person who is under
44 contract with or otherwise acting under the direction or on behalf of a law enforcement
45 authority:
- 46 (A) In immediate pursuit of a person law enforcement officers have reasonable
47 suspicion to believe or probable cause to suspect has committed an offense, not
48 including misdemeanors or offenses punishable by a fine only;
- 49 (B) For the purpose of documenting a crime scene where an offense, not including
50 misdemeanors or offenses punishable by a fine only, has been committed;
- 51 (C) For the purpose of investigating the scene of:
- 52 (i) A human fatality;
- 53 (ii) A motor vehicle accident causing death or serious bodily injury to a person; or
- 54 (iii) Any motor vehicle accident on a state highway or federal interstate or highway;
- 55 (D) In connection with the search for a missing person;
- 56 (E) For the purpose of conducting a high-risk tactical operation that poses a threat to
57 human life; or
- 58 (F) Of private property that is generally open to the public where the property owner
59 consents to law enforcement public safety responsibilities;

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

63 (A) Surveying the scene of a catastrophe or other damage to determine whether a state
64 of emergency should be declared;

65 (B) Preserving public safety, protecting property, or surveying damage or
66 contamination during a lawfully declared state of emergency; or

67 (C) Conducting routine air quality sampling and monitoring, as provided by state or
68 local law;

69 (10) At the scene of a spill, or a suspected spill, of hazardous materials;

70 (11) For the purpose of fire suppression;

71 (12) For the purpose of rescuing a person whose life or well-being is in imminent danger;

72 (13) If the image is captured by a real estate broker who is licensed in this state in
73 connection with the marketing, sale, or financing of real property, provided that no
74 individual is identifiable in the image;

75 (14) From a height no more than eight feet above ground level in a public place, if the
76 image was captured without using any electronic, mechanical, or other means to amplify
77 the image beyond normal human perception;

78 (15) Of public real property or a person on such property;

79 (16) If the image is captured by the owner or operator of an oil, gas, water, or other
80 pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related
81 facilities and is captured without the intent to conduct surveillance on an individual or
82 real property located in this state;

83 (17) In connection with oil pipeline safety and protection; or

84 (18) In connection with port authority surveillance and security.

85 (b) This part does not apply to the manufacture, assembly, distribution, or sale of an
86 unmanned aircraft.

87 16-11-92.

88 (a) It shall be illegal for a person to use an unmanned aircraft to capture an image of an
89 individual or privately owned real property in this state with the intent to conduct
90 surveillance on such individual or property.

91 (b) Any person who violates this Code section shall be guilty of a misdemeanor.

92 (c) It is a defense to prosecution under this Code section that the person destroyed the
93 image:

94 (1) As soon as the person had knowledge that the image was captured in violation of this
95 Code section; and

96 (2) Without disclosing, displaying, or distributing the image to a third party.

97 16-11-93.

98 (a) It shall be illegal for a person to:

99 (1) Capture an image in violation of Code Section 16-11-92; and

100 (2) Possess, disclose, display, distribute, or otherwise use such image.

101 (b) Any person who violates subsection (a) of this Code section by possessing an image
 102 shall be guilty of a misdemeanor. Any person who violates subsection (a) of this Code
 103 section by disclosing, displaying, distributing, or otherwise using an image shall be guilty
 104 of a misdemeanor of a high and aggravated nature.

105 (c) Each image a person possesses, discloses, displays, distributes, or otherwise uses in
 106 violation of this Code section shall constitute a separate offense.

107 (d) It shall be a defense to prosecution under this Code section for the possession of an
 108 image that the person destroyed the image as soon as the person had knowledge that the
 109 image was captured in violation of Code Section 16-11-92.

110 (e) It shall be a defense to prosecution under this Code section for the disclosure, display,
 111 distribution, or other use of an image that the person stopped disclosing, displaying,
 112 distributing, or otherwise using the image as soon as the person had knowledge that the
 113 image was captured in violation of Code Section 16-11-92.

114 16-11-94.

115 (a) Except as otherwise provided in subsection (b) of this Code section, an image captured
 116 in violation of Code Section 16-11-92 or an image captured by an unmanned aircraft that
 117 was incidental to the lawful capturing of an image:

118 (1) Shall not be used as evidence in any criminal or juvenile proceeding, civil action, or
 119 administrative proceeding;

120 (2) Shall not be subject to disclosure, inspection, or copying under Article 4 of
 121 Chapter 18 of Title 50; and

122 (3) Shall not be subject to discovery, subpoena, or other means of legal compulsion for
 123 its release.

124 (b) An image described in subsection (a) of this Code section may be disclosed and used
 125 as evidence to prove a violation of this part and is subject to discovery, subpoena, or other
 126 means of legal compulsion for such purpose.

127 16-11-95.

128 (a) As used in this Code section, the term 'malice' means a specific intent by the defendant
 129 to cause substantial injury or harm to the claimant.

130 (b) An owner or tenant of privately owned real property located in this state may bring
131 against a person who, in violation of Code Section 16-11-92, captured an image of the
132 property or the owner or tenant while on the property an action to:

133 (1) Enjoin a violation or imminent violation of Code Section 16-11-92 or 16-11-93;

134 (2) Recover a civil penalty of:

135 (A) Five thousand dollars for all images captured in a single episode in violation of
136 Code Section 16-11-92; or

137 (B) Ten thousand dollars for disclosure, display, distribution, or other use of any
138 images captured in a single episode in violation of Code Section 16-11-93; or

139 (3) Recover actual damages if the person who captured the image in violation of Code
140 Section 16-11-93 discloses, displays, or distributes the image with malice.

141 (c) For purposes of recovering the civil penalty or actual damages under subsection (a) of
142 this Code section, all owners of a parcel of real property are considered to be a single
143 owner and all tenants of a parcel of real property are considered to be a single tenant.

144 (d) In addition to any civil penalties authorized under this Code section, the court shall
145 award court costs and reasonable attorney's fees to the prevailing party.

146 (e) An action brought under this Code section shall be commenced within two years from
147 the date the image was:

148 (1) Captured in violation of Code Section 16-11-92; or

149 (2) Initially disclosed, displayed, distributed, or otherwise used in violation of Code
150 Section 16-11-93.

151 16-11-96.

152 The Department of Public Safety shall adopt rules and guidelines for use of an unmanned
153 aircraft by law enforcement authorities in this state.

154 16-11-97.

155 (a) Not earlier than January 1 and not later than January 15 of each odd-numbered year,
156 each state law enforcement agency and each county or municipal law enforcement agency
157 located in a county or municipality that used or operated an unmanned aircraft during the
158 preceding 24 months shall issue a written report to the Governor, the Lieutenant Governor,
159 and each member of the General Assembly and shall:

160 (1) Retain the report for public viewing; and

161 (2) Post the report on the law enforcement agency's publicly accessible website, if one
162 exists.

163 (b) The report shall include:

- 164 (1) The number of times an unmanned aircraft was used, organized by date, time,
165 location, and the types of incidents and justification for the use;
- 166 (2) The number of criminal investigations aided by the use of an unmanned aircraft and
167 a description of how the unmanned aircraft aided each investigation;
- 168 (3) The number of times an unmanned aircraft aided a law enforcement operation other
169 than a criminal investigation, the dates and locations of such operations, and a description
170 of how the unmanned aircraft aided each operation;
- 171 (4) The type of information collected on an individual, residence, property, or area that
172 was not the subject of a law enforcement operation and the frequency of the collection
173 of such information; and
- 174 (5) The total cost of acquiring, maintaining, repairing, and operating or otherwise using
175 each unmanned aircraft for the preceding 24 months."

176 **SECTION 2.**

177 This Act shall become effective on July 1, 2014, and shall apply to the use of unmanned
178 aircraft on and after such date.

179 **SECTION 3.**

180 All laws and parts of laws in conflict with this Act are repealed.