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STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2337 By: Wesselhoft of the House

By: Wesselhoft of the House

and

Standridge of the Senate

AS INTRODUCED

An Act relating to aircraft; creating the Oklahoma Unmanned Aerial Surveillance Act; defining terms; requiring use of unmanned aerial vehicles to comply with Federal Aviation Administration rules; prohibiting agent of state from using unmanned aerial vehicle; proscribing information disclosure; providing exceptions; limiting use in exceptions provided; barring facial recognition and other matching technology on nontargets; excluding equipping unmanned aerial vehicle with weapons; providing exception; blocking use of information gathered in violation of the act as evidence; granting exception for exculpatory evidence; permitting operation and disclosure of information in emergency situations; listing scenarios for emergency situation; terminating operation once information is gathered or warrant is acquired; deeming certain information to be obtained in violation of the act; requiring inventory; providing for delay in notification if adverse result might occur; specifying what constitutes an adverse result; allowing extensions of delayed notification; directing delivery of notice to subject of collected information; detailing contents of notice; mandating proceeding to determine disciplinary action for violation of act; prescribing punishment and fine for violations of act; permitting civil action for violations of act; awarding attorney fees and costs to prevailing party; directing recordkeeping for each use of an unmanned aerial vehicle; listing contents

1 of record; requiring record to be retained for
2 specified time; providing for release of record
3 through the Oklahoma Open Records Act; mandating
4 records be given to the Administrator of the Courts
5 annually; prescribing record to be retained for
6 minimum length of time; directing release of record
7 through an Open Records Act request; providing for
8 codification; and providing an effective date.

9 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

10 SECTION 1. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 400 of Title 3, unless there is
12 created a duplication in numbering, reads as follows:

13 A. This act shall be known and may be cited as the "Oklahoma
14 Unmanned Aerial Surveillance Act".

15 B. As used in the Oklahoma Unmanned Aerial Surveillance Act:

16 1. "Agent of the state or any political subdivision of the
17 state" means any state or local agency, including but not limited to
18 a law enforcement entity or any other investigative entity, agency,
19 department, division, bureau, board or commission or any individual
20 acting or purporting to act for or on behalf of a state or local
21 agency; and

22 2. "Unmanned aerial vehicle" means an aircraft that is operated
23 without the possibility of direct human intervention from within or
24 on the aircraft.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 401 of Title 3, unless there is
3 created a duplication in numbering, reads as follows:

4 A. Any use of unmanned aerial vehicles shall fully comply with
5 all Federal Aviation Administration requirements and guidelines.

6 B. Except as provided in the Oklahoma Unmanned Aerial
7 Surveillance Act, it is unlawful for an agent of the state or any
8 political subdivision of the state to operate an unmanned aerial
9 vehicle or to disclose or receive information acquired through the
10 operation of an unmanned aerial vehicle.

11 C. Exceptions:

12 1. Consent. It shall be lawful under the Oklahoma Unmanned
13 Aerial Surveillance Act to disclose or receive information about any
14 person acquired through the operation of an unmanned aerial vehicle
15 if the person has given written consent to the disclosure;

16 2. Emergency Situations. It shall be lawful under the Oklahoma
17 Unmanned Aerial Surveillance Act for an agent of the state or any
18 political subdivision of the state to operate an unmanned aerial
19 vehicle and for information from the operation to be disclosed or
20 received if the unmanned aerial vehicle is used in circumstances in
21 which it is reasonable to believe that there is an imminent threat
22 to the life or safety of a person, and to assist the person subject
23 to the following limitations:

1 a. not later than forty-eight (48) hours after the agent
2 of the state or any political subdivision of the state
3 begins operation of an unmanned aerial vehicle, a
4 supervisory official shall file a sworn statement with
5 the appropriate court setting forth the grounds for
6 the emergency use, and

7 b. the statement shall document the factual basis for the
8 emergency;

9 3. Warrant or Order.

10 a. An unmanned aerial vehicle may be operated and
11 information from the operation disclosed in order to
12 collect information from a nonpublic area only
13 pursuant to a warrant issued by a court of competent
14 jurisdiction and in full compliance with Sections 1221
15 through 1241 of Title 22 of the Oklahoma Statutes.

16 b. An unmanned aerial vehicle may be operated and
17 information from the operation disclosed in order to
18 collect information from a public area pursuant to a
19 warrant authorized under subparagraph a of this
20 paragraph or pursuant to an order issued by any court
21 of competent jurisdiction if the agent of the state or
22 any political subdivision of the state offers specific
23 and articulable facts demonstrating reasonable
24 suspicion of criminal activity, that the operation of

1 the public unmanned aircraft system will uncover the
2 activity, and that alternative methods of data
3 collection are either cost-prohibitive or present a
4 significant risk to any person's bodily safety. The
5 order shall not be issued for a period longer than
6 forty-eight (48) hours. Extensions of an order may be
7 granted but shall be no longer than the authorizing
8 judge deems necessary to achieve the purposes for
9 which it was granted and in no event for longer than
10 thirty (30) days;

11 4. Non-law-enforcement Operations. It shall be lawful under
12 the Oklahoma Unmanned Aerial Surveillance Act for an agent of the
13 state or any political subdivision of the state to operate an
14 unmanned aerial vehicle and for information derived from the
15 operation to be disclosed if no part of any information and no
16 evidence derived from the operation may be received as evidence in
17 any trial, hearing or other proceeding in or before any court, grand
18 jury, department, officer, agency, regulatory body, legislative
19 committee or other authority of the state or a political subdivision
20 of the state or for any intelligence purpose;

21 5. Public Land. An unmanned aerial vehicle may be operated by
22 any authorized agent of the state or any political subdivision of
23 the state or federal agency, when conducting surveillance
24 exclusively of public land or property; provided, that the

1 surveillance shall not be targeted at gathering or producing
2 information concerning any private individuals or organizations that
3 are using or are present on the land or property. The entity
4 conducting surveillance shall notify the agency that has oversight
5 of the target public land or property prior to conducting the
6 surveillance; and

7 6. Scientific Research and Cartography. An unmanned aerial
8 vehicle may be operated by any authorized agent of the state or any
9 political subdivision of the state or federal agency when conducting
10 scientific research, including but not limited to climatological,
11 agricultural, hydrological or meteorological research, or for data
12 or image collection for cartography or digital mapping for
13 geographic information systems (GIS). Operation under this
14 paragraph shall not be targeted at gathering or producing
15 information concerning any private individuals or organizations and
16 shall not include any biometric or facial recognition operation.

17 D. When unmanned aerial vehicles are used pursuant to
18 subsection C of this section, they shall be operated in a manner to
19 collect data only on the target and to avoid data collection on
20 individuals, homes or areas other than the target. Neither facial
21 recognition nor other biometric matching technology may be used on
22 nontarget data collected by an unmanned aerial vehicle.

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1 E. Unmanned aerial vehicles shall not be equipped with weapons
2 except when used by duly authorized members, agents or contractors
3 of the Department of Defense or the United States military.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 402 of Title 3, unless there is
6 created a duplication in numbering, reads as follows:

7 Whenever an agent of the state or any political subdivision of
8 the state uses an unmanned aerial vehicle, no part of information
9 acquired and no evidence derived from the operation may be received
10 as evidence in any trial, hearing or other proceeding in or before
11 any court, grand jury, department, officer, agency, regulatory body,
12 legislative committee or other authority of the state or any
13 political subdivision of the state if that information or data was
14 collected in violation of the Oklahoma Unmanned Aerial Surveillance
15 Act. This exclusion shall not apply to exculpatory evidence offered
16 by a private individual or organization, nor to evidence offered or
17 received to show or prove a violation of this act.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 403 of Title 3, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Emergency Situation Exception. Notwithstanding any other
22 provision of the Oklahoma Unmanned Aerial Surveillance Act, an agent
23 of the state or any political subdivision of the state may operate
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1 an unmanned aerial vehicle and disclose information from the
2 operation if:

3 1. The agent of the state or any political subdivision of the
4 state reasonably determines that an emergency situation exists that:

5 a. involves:

6 (1) immediate danger of death or serious physical
7 injury to any person, including but not limited
8 to missing children, wildfires, severe weather or
9 other natural disasters, or

10 (2) conspiratorial activities threatening the
11 national security interest, and

12 b. requires operation of an unmanned aerial vehicle
13 before a warrant or order authorizing an operation
14 can, with due diligence, be obtained; or

15 2. There are grounds upon which a warrant or order could be
16 entered to authorize the operation, provided that an application for
17 a warrant or order approving the operation is made within forty-
18 eight (48) hours after the operation begins to occur.

19 B. Failure to Obtain a Warrant or Order.

20 1. Termination of Operation. In the absence of a warrant or
21 order, an operation of an unmanned aerial vehicle carried out under
22 subsection A of this section shall immediately terminate when the
23 information sought is obtained or when the application for the
24 warrant or order is denied, whichever is earlier.

1 2. Prohibition on Use as Evidence. In the event an application
2 for the warrant or order is denied, the information obtained from
3 the operation of an unmanned aerial vehicle shall be treated as
4 having been obtained in violation of the Oklahoma Unmanned Aerial
5 Surveillance Act and an inventory of the information obtained from
6 the operation shall be disclosed by the person named in the
7 application.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 404 of Title 3, unless there is
10 created a duplication in numbering, reads as follows:

11 A. An agent of the state or any political subdivision of the
12 state under paragraph 3 of subsection C of Section 2 of this act or
13 Section 3 of this act may, where a court order or warrant is sought,
14 include in the application a request, which the court shall grant,
15 for an order delaying the notification for a period not to exceed
16 ninety (90) days, if the court determines that there is reason to
17 believe that notification of the existence of the court order may
18 have an adverse result described in subsection B of this section.

19 B. An adverse result for the purposes of subsection A of this
20 section is:

- 21 1. Endangering the life or physical safety of an individual;
- 22 2. Flight from prosecution;
- 23 3. Destruction of or tampering with evidence;
- 24 4. Intimidation of potential witnesses; or

1 5. Otherwise seriously jeopardizing an investigation or unduly
2 delaying a trial.

3 C. Extensions of the delay of notification of up to ninety (90)
4 days each may be granted by the court upon application or by
5 certification by the agent of the state or any political subdivision
6 of the state.

7 D. Upon expiration of the period of delay of notification the
8 agent of the state or any political subdivision of the state shall
9 serve upon or deliver by registered or first-class mail to the
10 person or persons upon whom information was collected a copy of the
11 warrant or order together with notice that:

12 1. States with reasonable specificity the nature of the law
13 enforcement inquiry; and

14 2. Informs the person or persons upon whom information was
15 collected:

16 a. that notification was delayed,

17 b. what governmental entity or court made the
18 certification or determination pursuant to which that
19 delay was made, and

20 c. which provision of the Oklahoma Unmanned Aerial
21 Surveillance Act allowed the delay.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 405 of Title 3, unless there is
24 created a duplication in numbering, reads as follows:

1 A. If a court or appropriate department or agency determines
2 that an agent of the state or any political subdivision of the state
3 has violated any provision of the Oklahoma Unmanned Aerial
4 Surveillance Act, and the court or appropriate department or agency
5 finds that the circumstances surrounding the violation raise serious
6 questions about whether or not the agent of the state or any
7 political subdivision of the state acted willfully or intentionally
8 with respect to the violation, the department or agency shall, upon
9 receipt of a true and correct copy of the decision and findings of
10 the court or appropriate department or agency, promptly initiate a
11 proceeding to determine whether disciplinary action against the
12 agent of the state or any political subdivision of the state is
13 warranted. The director of such department or agency shall notify
14 the Attorney General of all such proceedings and provide the
15 Attorney General with the reasons for each determination made.

16 B. Any violation of the Oklahoma Unmanned Aerial Surveillance
17 Act shall be punishable as a misdemeanor with a sentence not to
18 exceed six (6) months in the county jail and a fine of not less than
19 Two Hundred Fifty Dollars (\$250.00) and not more than Two Thousand
20 Five Hundred Dollars (\$2,500.00) per violation.

21 C. Regardless of whether any action is taken pursuant to
22 subsection A or B of this section, any private individual or
23 organization alleging a violation of the Oklahoma Unmanned Aerial
24 Surveillance Act may bring a civil action in district court for

1 declaratory and injunctive relief and shall be entitled to
2 reasonable attorney fees and costs upon prevailing.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 406 of Title 3, unless there is
5 created a duplication in numbering, reads as follows:

6 A. Recordkeeping. An agent of the state or any political
7 subdivision of the state using unmanned aerial vehicles pursuant to
8 the Oklahoma Unmanned Aerial Surveillance Act shall maintain a log
9 recording each use of an unmanned aerial vehicle. The log shall
10 include, at a minimum:

- 11 1. The date, time and location of use;
 - 12 2. The target of data collection;
 - 13 3. The type of data collected;
 - 14 4. The justification for the deployment;
 - 15 5. The operator of the unmanned aerial vehicle;
 - 16 6. The person applying for a warrant authorizing the use;
 - 17 7. Whether an exception to the warrant requirements specified
18 in the Oklahoma Unmanned Aerial Surveillance Act was used to justify
19 the deployment of an unmanned aerial vehicle;
 - 20 8. Whether a warrant request was granted or denied;
 - 21 9. Which court and judge authorized or denied a warrant
22 application; and
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1 10. Whether any agent of the state or political subdivision of
2 the state was subject to any discipline or criminal proceedings for
3 violating any provision of this act.

4 B. The log shall be retained by the state for a minimum of
5 three (3) years.

6 C. The log shall be made available subject to a request made
7 through the Oklahoma Open Records Act.

8 D. In December of each year the state or any political
9 subdivision of the state maintaining a log pursuant to subsection A
10 of this section shall report their log to the Administrator of the
11 Courts. The Administrator of the Courts shall retain these records
12 for a minimum of ten (10) years, and the records shall be made
13 available subject to a request made through the Oklahoma Open
14 Records Act.

15 SECTION 8. This act shall become effective November 1, 2016.

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17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,
18 dated 02/24/2016 - DO PASS, As Coauthored.