

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
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As Engrossed: H3/10/15 S3/25/15
A Bill

HOUSE BILL 1669

By: Representatives Womack, C. Armstrong, Ballinger, C. Fite, Gonzales, Walker
By: Senator Hester

For An Act To Be Entitled

AN ACT TO PROMOTE THE RIGHTS GUARANTEED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION; TO PROTECT A CITIZEN'S RIGHT TO OBSERVE AND RECORD PUBLIC EVENTS; AND FOR OTHER PURPOSES.

Subtitle

TO PROMOTE THE RIGHTS GUARANTEED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION; AND TO PROTECT A CITIZEN'S RIGHT TO OBSERVE AND RECORD PUBLIC EVENTS.

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

SECTION 1. Arkansas Code Title 21, Chapter 1, Subchapter 1, is amended to add a new section to read as follows:

21-1-106. Public recording and deletion of electronic data.

(a) As used in this section:

(1)(A) "Prohibit" means to interfere with the physical operation of a recording device by threat, duress, coercion, direct order, arrest, detention, or use of force.

(B) "Prohibit" does not include instances when there is no interference with the operation of the recording device or the person who operates it; and

(2) "Recording device" means a device that captures and records data or information, including without limitation a film camera, digital



camera, tape recorder, or electronic sound recorder.

(b)(1) A public officer or employee shall not:

(A) Prohibit a person from using a recording device carried on or near the person in a place that is open to and accessible to the general public or any private property where the person is lawfully present unless the act of recording or the location of the recording person:

(i) Presents a risk to the physical safety of anyone present, not including the person making the recording;

(ii) Is inside a public drinking water treatment facility and presents a risk to the public drinking water treatment facility;

(iii) Constitutes an element of a criminal offense;

(iv) Could reasonably be expected to lead to the infringement of copyrighted material;

(v) Appears to circumvent established procedures that ordinarily require permission for or payment in exchange for the viewing, use, reproduction, or recordation of data or information; or

(vi) Unreasonably obstructs or inhibits another person's lawful presence or movement;

(B) Delete any electronic data or any other information derived by recording from a recording device carried on or near the person against the wishes of the person possessing the recording device or otherwise destroy information contained in the recording device unless the data are considered contraband; or

(C) Seize or confiscate a recording device carried on or near the person using the recording device unless the recording device appears to be involved in the commission of a crime or unless the seizure is otherwise justified by an exigent circumstance.

(2) If a person uses a recording device to intrude upon the seclusion or solitude of another person or upon the other person's private affairs or concerns, this subsection does not apply if the intrusion:

(A) Violates a reasonable expectation of privacy; and

(B) Would be highly offensive to a reasonable person.

(c)(1) A violation of this section constitutes a waiving of the sovereign immunity of the state.

(2) A public officer or employee who violates this section may only be sued in his or her official capacity.

(3) A court construing this section shall do so consistently with official capacity claims under the First Amendment of the United States Constitution filed through 42 U.S.C. § 1983 and the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.

(4) Punitive damages are not provided under this section.

(5) When a party sues for relief under this section or any other applicable law, the party shall only receive a single remedy for a single injury.

(d) A publicly funded school or publicly funded institution of higher education is exempt from this section.

(e) Nothing in this section is intended to change, diminish, or denigrate the powers of those who rightfully control private property to regulate, place conditions on, or prohibit recording activities that take place on that private property.

(f) This section does not:

(1) Imply any kind of right or power of a person to use devices to change the light levels of his or her surroundings, including without limitation umbrellas, reflectors, lights, or flashes;

(2) Change, diminish, or denigrate the inherent or constitutional powers of the courts to issue binding orders or to regulate the absence, presence, or conduct of citizens occupying buildings or real property under the jurisdiction of the courts; or

(3) Apply to the grounds of a hospital or other medical facility governed by the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(g) A state agency may adopt policies to limit or prohibit the use of recording devices by that state agency's employees or contractors in the course and scope of their employment if those policies are intended to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, or the requirements of other state or federal privacy laws.

/s/Womack