

EYES IN THE SKY

What drones are allowed to see in Texas

By Scott Fredricks

A small yellow container trips briskly down a conveyor belt before being lifted effortlessly into the sky by a small eight-bladed mini-copter. The diminutive octocopter flies smoothly across a blue sky and over green fields before landing gracefully on the back porch of a suburban home, releasing the package and drifting back into the sky. A father and his young son run expectantly out the back door of their home, pick up the container eager to unpack the purchase they made less than 30 minutes before on their tablet. While this may be Amazon's vision of the future for package delivery, a vast field of government (law enforcement, military, fire-fighting, search and rescue) and commercial (mapping, surveying, inspecting) uses for drones is exploding with a report from the American Civil Liberties Union calling 2013 the "year of the drone." This rapid growth has left regulators and lawmakers from around the country scrambling to address the challenges delivered by this new technology.

As one might expect, the Federal Aviation Administration (FAA) has claimed regulatory authority over drone flight and Congress ordered the FAA to develop a comprehensive plan to integrate unmanned aircraft such as drones into the national airspace system by 2015. However, the FAA is focused principally on the safety and security of drones and the airspace itself and not on the issue that concerns most members of the public that imagine camera-equipped drones skirting over their back yards – privacy. On this subject, state legislators launched into action. In 2013, 43 states considered bills related to domestic drones with eight states' laws going into effect in 2013 and three more beginning in 2014. Clearly, state lawmakers are responding to public anxiety over the privacy issues drone flights present.

The Texas Privacy Act ([TEX. GOV'T CODE CH. 423](#)) took effect on September 1, 2013 and set ground rules for the lawful (and unlawful) capture of images by drones in this state. Though titled the "Privacy Act," the statute actually reads more like a permission slip, detailing nineteen broad categories of activity that drones are permitted to capture images of, including:

- anything with the consent of the individual who owns or lawfully occupies the real property captured in the image (TEX. GOV'T CODE 423.002(a)(6));
- public real property or a person on that property (TEX. GOV'T CODE 423.002(a)(16)); and,
- anything in connection with oil pipeline safety (TEX. GOV'T CODE 423.002(a)(18)) or an electric or natural gas utility inspecting its facilities (TEX. GOV'T CODE 423.002(a)(5)).

Any use that does not fall within one of these or the other fifteen exceptions in the statute, can be prosecuted as a criminal misdemeanor offense and the owner or tenant of the property photographed can seek civil penalties of \$5,000 per episode or \$10,000 per episode if the images were disclosed, displayed, or distributed to others. However, an operator can escape criminal prosecution if they destroy the image as soon as they have knowledge that the image was captured in violation of the statute. Given that the statute expressly permits so many uses, and the penalties easily avoided, it is likely that drones will become an increasingly popular commercial tool in Texas once the FAA creates the regulatory framework for the unmanned aircraft to take flight.

So, keep your eyes on the sky and smile for the camera that may soon be flying overhead.