

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/10/15

A Bill

HOUSE BILL 1669

5 By: Representatives Womack, C. Armstrong, Ballinger, C. Fite, Gonzales, Walker
6 By: Senator Hester
7

For An Act To Be Entitled

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

15 TO PROMOTE THE RIGHTS GUARANTEED BY THE
16 FIRST AMENDMENT OF THE UNITED STATES
17 CONSTITUTION; AND TO PROTECT A CITIZEN'S
18 RIGHT TO OBSERVE AND RECORD PUBLIC
19 EVENTS.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 21, Chapter 1, Subchapter 1, is amended
26 to add a new section to read as follows:

27 21-1-106. Public recording and deletion of electronic data.

28 (a) As used in this section:

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

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

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



1 camera, tape recorder, or electronic sound recorder.

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

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

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

9 (ii) Constitutes an element of a criminal offense;

10 (iii) Could reasonably be expected to lead to the
11 infringement of copyrighted material;

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

15 (v) Unreasonably obstructs or inhibits another
16 person's lawful presence or movement;

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

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

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

29 (A) Violates a reasonable expectation of privacy; and

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

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

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

35 (3) A court construing this section shall do so consistently
36 with official capacity claims under the First Amendment of the United States

1 Constitution filed through 42 U.S.C. § 1983 and the Arkansas Civil Rights Act
2 of 1993, § 16-123-101 et seq.

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

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

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

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

13 (f) This section does not:

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

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

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

27 /s/Womack
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