

1 State of Arkansas *As Engrossed: H3/10/15 S3/25/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

HOUSE BILL 1669

4

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

6 By: Senator Hester

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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

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

11 (iii) Constitutes an element of a criminal offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (f) This section does not:

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

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

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

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

32 /s/Womack

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35 APPROVED: 04/04/2015