A BILL FOR AN ACT

RELATING TO UNMANNED AERIAL VEHICLES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that unmanned aerial vehicles are becoming increasingly popular in Hawaii and the rest of the United States. Hobbyists use them for recreational purposes, and businesses and government entities use them in a plethora of ways that benefit society and individual residents. The federal government is regulating the use of these devices as the airways see more usage by all stakeholders.

The purpose of this Act is to establish unmanned aerial vehicle laws and rules that complement federal rules and regulations.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

UNMANNED AERIAL VEHICLES

§ 1-1 Definitions. As used in this chapter:
"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Operator" means any person using or operating an unmanned aerial vehicle.

"Personal information" means all information that:

(1) Describes, locates, or indexes information or data relating to a person, including but not limited to physical location, social security number, driver's license number, government-issued identification number, student identification number, real or personal property holdings identified in tax filings, educational records, financial transactions, medical history, ancestry, religious affiliation, political ideology or affiliation, criminal record, or employment history;

(2) Affords a basis for inferring personal characteristics, such as facial recognition and other biometric identification technology, fingerprints, voiceprints, or photographs; or
(3) Indicates a person's membership in or association with an organization, participation in an activity, or admission or entrance to an institution or facility.

"Unmanned aerial vehicle" means a powered vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and can be expendable or recoverable. "Unmanned aerial vehicle" does not include a remote controlled airplane.

§ -2 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director shall:

(1) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter;

(2) Impose a fine on an operator for any cause prescribed by this chapter, or for any violation of this chapter or any rule adopted pursuant to this chapter; and

(3) Investigate the use of any unmanned aerial vehicle reported to be in violation of this chapter or any rule adopted pursuant to this chapter.

§ -3 Prohibited acts; penalty. (a) No person shall operate an unmanned aerial vehicle:
(1) In violation of chapter 263 or any applicable federal law and Federal Aviation Administration regulations relating to the operation of unmanned aerial vehicles;

(2) Within five miles of an airport;

(3) Within five hundred feet of an emergency response vehicle or first responder during an emergency, unless the unmanned aerial vehicle is operated pursuant to section 4(b);

(4) To intentionally collect personal information or intentionally publish or distribute personal information acquired through the operation of an unmanned aerial vehicle without express written consent from the person whose personal information is acquired;

(5) At an altitude higher than four hundred feet above ground level;

(6) Outside the visual line of sight of the operator. The operator shall use natural vision to maintain at all times an unobstructed view of the unmanned aerial vehicle without the use of vision enhancing devices, including but not limited to binoculars, night vision
goggles, powered vision magnifying devices, or similar
devices;
(7) In a manner that interferes with, or fails to give way
to, any manned aircraft;
(8) Whenever weather conditions impair the operator's
ability to safely operate the unmanned aerial vehicle;
(9) Over any open air assembly unit, school, school yard,
hospital, place of worship, prison, or police station
without the property owner's written consent and
subject to any restrictions that the property owner
may impose on the operation of the unmanned aerial
vehicle;
(10) (A) Within five hundred feet of any water intake
facility or any electric generating facility,
substation, or control center;
(B) Within one hundred feet of any electric
transmission facility; or
(C) Within twenty-five feet of any electric
distribution facility or of any overhead cable,
wire, conveyor, or similar equipment for the
transmission of sounds or signals, or of heat,
light, or power, or of data, upon or along any
public way within the city,
without the facility or equipment owner's written
consent and subject to any restrictions that the
facility or equipment owner may impose on the
operation of the unmanned aerial vehicle;

(11) While under the influence of any intoxicating liquor
as defined in section 281-1, intoxicating compound as
defined in section 712-1240, or other drug, or any
combination thereof;

(12) With the intent to use the unmanned aerial vehicle or
anything attached to it to cause harm to persons or
property;

(13) In a reckless or careless manner; or

(14) In violation of any federal or state law.

(b) All data and personal information collected through
the use of an unmanned aerial vehicle shall not be used or
repurposed for any purpose other than the original purpose for
which the data or personal information was collected.
(c) Any person who operates an unmanned aerial vehicle in violation of this chapter shall pay a civil penalty of $ for each separate offense.

(d) All penalties collected by the department shall be deposited into the compliance resolution fund under section 26-9(o) for the purpose of enforcing this chapter.

§ -4 Prohibited uses by law enforcement agencies; exceptions. (a) No law enforcement agency shall use an unmanned aerial vehicle to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute, ordinance, or administrative rule without first obtaining a warrant.

(b) Notwithstanding subsection (a) and in addition to the authorized activities under section -5, a law enforcement or public safety agency may deploy an unmanned aerial vehicle for the following purposes:

(1) When there is a reasonable belief that an emergency situation exists, whether or not the situation involves criminal activity, and the use of an unmanned aerial vehicle is necessary to prevent immediate
danger of death or serious physical injury to any
person;
(2) To conduct a search and rescue operation where the use
of an unmanned aerial vehicle is determined to be
necessary to alleviate an immediate danger to any
person;
(3) To respond to a hostage situation; or
(4) To conduct training exercises related to any of the
purposes in this subsection.
§ -5 Public agency exceptions. Nothing in this chapter
shall prohibit the use of unmanned aerial vehicles by a public
agency:
(1) To conduct environmental or disaster response,
including but not limited to disaster relief, victim
recovery or search and rescue, and monitoring,
inspection, underwater repair, or structural damage
assessments;
(2) To dispose of a suspected or actual explosive device;
(3) To monitor plant or animal populations;
(4) To conduct atmospheric testing or monitoring;
(5) For farming and agricultural uses;
(6) To review traffic congestion and conditions;
(7) To survey or inspect public lands and property; or
(8) To survey the ocean and coastline.

§ -6 Weapons; prohibited. In no case shall a person or public agency equip an unmanned aerial vehicle with a weapon or deploy an unmanned aerial vehicle that is equipped with a weapon.

For the purpose of this section, "weapon" means any device designed to harm or incapacitate a human being by use of a projectile, explosive, biological or chemical agent, electricity, visible or invisible directed energy, radiation, or any other means.

§ -7 Civil cause of action; remedies. (a) An individual shall have a civil cause of action against any person that collects, publishes, or distributes the individual's personal information in violation of this chapter.

(b) In any civil action brought under this section, if the court finds a violation, the court may award:

(1) Injunctive relief;
(2) Equitable relief;
(3) Compensatory damages;
Punitive damages, except as prohibited by section 662-2;

Costs of the action; and

Reasonable attorney's fees."

SECTION 3. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§711- Unmanned aerial vehicles; prohibited acts. (1) It shall be unlawful for any person to intentionally, knowingly, or recklessly use an unmanned aerial vehicle to record or photograph a person in a private place without the consent of the person for the purpose of spying on the person or invading the privacy of another person with an unlawful purpose, under circumstances in which a reasonable person in the private place would not expect to be observed.

(2) Violation of this section is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording or photograph made in violation of this section."

SECTION 4. Section 711-1100, Hawaii Revised Statutes, is amended as follows:
1. By adding a new definition to be appropriately inserted and to read:

"Unmanned aerial vehicle" means a powered vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, and can be expendable or recoverable."

2. By amending the definition of "record" to read:

"Record", for the purposes of sections 711-1110.9 [amd], 711-1111, and 711-__, means to videotape, film, photograph, or archive electronically or digitally."

SECTION 5. Section 711-1110.9, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law:

(a) The person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any device, including an unmanned aerial vehicle, for observing, recording, amplifying, or broadcasting
another person in a stage of undress or sexual activity in that place; or

(b) The person knowingly discloses an image or video of another identifiable person either in the nude, as defined in section 712-1210, or engaging in sexual conduct, as defined in section 712-1210, without the consent of the depicted person, with intent to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; provided that:

(i) This paragraph shall not apply to images or videos of the depicted person made:

(A) When the person was voluntarily nude in public or voluntarily engaging in sexual conduct in public; or

(B) Pursuant to a voluntary commercial transaction; and

(ii) Nothing in this paragraph shall be construed to impose liability on a provider of "electronic communication service" or "remote computing
service" as those terms are defined in section 803-41, for an image or video disclosed through the electronic communication service or remote computing service by another person."

SECTION 6. Section 711-1111, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;

(b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;
(c) Trespasses on property for the sexual gratification of the actor;

(d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device, including an unmanned aerial vehicle, for observing, recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity;

(e) Installs or uses outside a private place any device, including an unmanned aerial vehicle, for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(f) Covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, including an unmanned aerial vehicle, and that image is taken while that person is in a public place and without that person's consent;
(g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this paragraph does not apply to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or

(ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;

(h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message
or photographic image in the course of employment with
an agency engaged in transmitting it; or
(i) Knowingly possesses materials created under
circumstances prohibited in section 711-1110.9."

SECTION 7. This Act does not affect rights and duties that
matured, penalties that were incurred, and proceedings that were
begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY:

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Report Title:
Department of Commerce and Consumer Affairs; Unmanned Aerial Vehicles; Restrictions on Use; Violation of Privacy

Description:
Establishes restrictions on use of unmanned aerial vehicles. Amends the offenses of violation of privacy in the first and second degrees to specifically address the use of unmanned aerial vehicles in the commission of these offenses.

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