

JAN 19 2018

A BILL FOR AN ACT

RELATING TO UNMANNED AERIAL VEHICLES.

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

1 SECTION 1. The legislature finds that unmanned aerial
2 vehicles are becoming increasingly popular in Hawaii and the
3 rest of the United States. Hobbyists use them for recreational
4 purposes, and businesses and government entities use them in a
5 plethora of ways that benefit society and individuals. The
6 legislature also finds that the federal government is regulating
7 the use of these devices in light of the increased usage by all
8 stakeholders.

9 The purpose of this Act is to establish unmanned aerial
10 vehicle laws that complement federal regulation.

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

14 "CHAPTER

15 UNMANNED AERIAL VEHICLES

16 § -1 Definitions. As used in this chapter:



1 "Department" means the department of commerce and consumer
2 affairs.

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

5 "Operator" means a person using or operating an unmanned
6 aerial vehicle.

7 "Personal information" means all information that:

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

18 (2) Affords a basis for inferring personal
19 characteristics, such as facial recognition and other
20 biometric identification technology, fingerprints,
21 voiceprints, or photographs; or



1 (3) Indicates a person's membership in or association with
2 an organization, participation in an activity, or
3 admission or entrance to an institution or facility.

4 "Unmanned aerial vehicle" means a powered vehicle that:

- 5 (1) Does not carry a human operator;
- 6 (2) Uses aerodynamic forces to provide vehicle lift;
- 7 (3) Can fly autonomously or be piloted remotely; and
- 8 (4) Can be expendable or recoverable;

9 provided that "unmanned aerial vehicle" does not include a
10 remote controlled airplane.

11 § -2 Powers and duties of the director. In addition to
12 any other powers and duties authorized by law, the director
13 shall:

- 14 (1) Adopt rules pursuant to chapter 91 as the director
15 deems necessary for the purposes of this chapter;
- 16 (2) Impose a fine on an operator for any cause prescribed
17 by this chapter, or for any violation of this chapter
18 or a rule adopted pursuant to this chapter; and
- 19 (3) Investigate the use of any unmanned aerial vehicle
20 reported to be in violation of this chapter or a rule
21 adopted pursuant to this chapter.



1 § -3 Prohibited acts; penalty. (a) No person shall
2 operate an unmanned aerial vehicle:

3 (1) In violation of chapter 263, regulations of the
4 Federal Aviation Administration relating to the
5 operation of unmanned aerial vehicles (14 C.F.R. part
6 107), or any other applicable federal law;

7 (2) Within five miles of an airport;

8 (3) Within five hundred feet of an emergency response
9 vehicle or first responder during an emergency, except
10 as authorized under section -4(b);

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

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

19 (6) Outside the visual line of sight of the operator. The
20 operator shall use natural vision to maintain at all
21 times an unobstructed view of the unmanned aerial



1 vehicle without the use of vision enhancing devices,
2 including but not limited to binoculars, night vision
3 goggles, powered vision magnifying devices, or similar
4 devices;

5 (7) In a manner that interferes with, or fails to give way
6 to, any manned aircraft;

7 (8) Whenever weather conditions impair the operator's
8 ability to safely operate the unmanned aerial vehicle;

9 (9) Over any open air assembly unit, school, school yard,
10 hospital, place of worship, prison, or police station
11 without the property owner's written consent and
12 subject to any restrictions that the property owner
13 may impose on the operation of the unmanned aerial
14 vehicle;

15 (10) Within:

16 (A) Five hundred feet of any water intake facility or
17 any electric generating facility, substation, or
18 control center;

19 (B) One hundred feet of any electric transmission
20 facility; or



S.B. NO. 2160

- 1 (C) Twenty-five feet of any electric distribution
2 facility or of any overhead cable, wire,
3 conveyor, or similar equipment for the
4 transmission of sounds or signals, or of heat,
5 light, or power, or of data, upon or along any
6 public way,
7 without the facility or equipment owner's written
8 consent and subject to any restrictions that the
9 facility or equipment owner may impose on the
10 operation of the unmanned aerial vehicle;
- 11 (11) While under the influence of any intoxicating liquor
12 as defined in section 281-1, intoxicating compound as
13 defined in section 712-1240, any other drug, or any
14 combination thereof;
- 15 (12) With the intent to use the unmanned aerial vehicle or
16 anything attached to it to cause harm to persons or
17 property;
- 18 (13) In a reckless or careless manner; or
- 19 (14) In violation of any federal or state law.
- 20 (b) All data and personal information collected through
21 the use of an unmanned aerial vehicle shall not be used or



1 repurposed for any purpose other than the original purpose for
2 which the data or personal information was collected.

3 (c) Any person who operates an unmanned aerial vehicle in
4 violation of this chapter shall pay a civil penalty of
5 \$ for each separate offense.

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

9 **§ -4 Prohibited uses by law enforcement agencies;**

10 **exceptions.** (a) No law enforcement agency shall use an
11 unmanned aerial vehicle to gather evidence or other information
12 pertaining to criminal conduct or conduct in violation of a
13 statute, ordinance, or administrative rule without first
14 obtaining a warrant.

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

19 (1) When there is a reasonable belief that an emergency
20 situation exists, whether or not the situation
21 involves criminal activity, and the use of an unmanned



1 aerial vehicle is necessary to prevent immediate
2 danger of death or serious physical injury to any
3 person;

4 (2) To conduct a search and rescue operation where the use
5 of an unmanned aerial vehicle is determined to be
6 necessary to alleviate an immediate danger to any
7 person;

8 (3) To respond to a hostage situation; or

9 (4) To conduct training exercises related to any purpose
10 set forth in this subsection.

11 § -5 **Public agency exceptions.** Nothing in this chapter
12 shall prohibit the use of unmanned aerial vehicles by a public
13 agency:

14 (1) To conduct environmental or disaster response,
15 including but not limited to disaster relief, victim
16 recovery or search and rescue, and monitoring,
17 inspection, underwater repair, or structural damage
18 assessments;

19 (2) To dispose of a suspected or actual explosive device;

20 (3) To monitor plant or animal populations;

21 (4) To conduct atmospheric testing or monitoring;



- 1 (5) For farming and agricultural uses;
- 2 (6) To review traffic congestion and conditions;
- 3 (7) To survey or inspect public lands and property; or
- 4 (8) To survey the ocean and coastline.

5 § -6 **Weapons; prohibited.** (a) No person or public
6 agency shall equip an unmanned aerial vehicle with a weapon or
7 deploy an unmanned aerial vehicle that is equipped with a
8 weapon.

9 (b) For the purposes of this section, "weapon" means any
10 device designed to harm or incapacitate a human being by use of
11 a projectile, explosive, biological or chemical agent,
12 electricity, visible or invisible directed energy, radiation, or
13 any other means.

14 § -7 **Civil cause of action; remedies.** (a) An
15 individual shall have a civil cause of action against any person
16 that collects, publishes, or distributes the individual's
17 personal information in violation of this chapter.

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

- 20 (1) Injunctive relief;
- 21 (2) Equitable relief;



- 1 (3) Compensatory damages;
- 2 (4) Punitive damages, except as prohibited by section 662-
- 3 2;
- 4 (5) Costs of the action; and
- 5 (6) Reasonable attorney's fees."

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

9 "§711- Unmanned aerial vehicles; prohibited acts. (1)

10 It shall be unlawful for any person to intentionally, knowingly,
11 or recklessly use an unmanned aerial vehicle to record or
12 photograph a person in a private place without the consent of
13 the person for the purpose of spying on the person or invading
14 the privacy of another person with an unlawful purpose, under
15 circumstances in which a reasonable person in the private place
16 would not expect to be observed.

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



S.B. NO. 2160

1 SECTION 4. Section 711-1100, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

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

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

10 "Record", for the purposes of sections' 711-1110.9 [and],
11 711-1111, and 711-___, means to videotape, film, photograph, or
12 archive electronically or digitally."

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

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

18 (a) The person intentionally or knowingly installs or
19 uses, or both, in any private place, without consent
20 of the person or persons entitled to privacy therein,
21 any device, including an unmanned aerial vehicle, for



S.B. NO. 2160

1 observing, recording, amplifying, or broadcasting
2 another person in a stage of undress or sexual
3 activity in that place; or

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

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

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

18 (B) Pursuant to a voluntary commercial
19 transaction; and

20 (ii) Nothing in this paragraph shall be construed to
21 impose liability on a provider of "electronic



1 communication service" or "remote computing
2 service" as those terms are defined in section
3 803-41, for an image or video disclosed through
4 the electronic communication service or remote
5 computing service by another person."

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

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

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

14 (b) Peers or peeps into a window or other opening of a
15 dwelling or other structure adapted for sojourn or
16 overnight accommodations for the purpose of spying on
17 the occupant thereof or invading the privacy of
18 another person with a lewd or unlawful purpose, under
19 circumstances in which a reasonable person in the
20 dwelling or other structure would not expect to be
21 observed;



S.B. NO. 2160

1 (c) Trespasses on property for the sexual gratification of
2 the actor;

3 (d) Installs or uses, or both, in any private place,
4 without consent of the person or persons entitled to
5 privacy therein, any means or device, including an
6 unmanned aerial vehicle, for observing, recording,
7 amplifying, or broadcasting sounds or events in that
8 place other than another person in a stage of undress
9 or sexual activity; provided that this paragraph shall
10 not prohibit a person from making a video or audio
11 recording or taking a photograph of a law enforcement
12 officer while the officer is in the performance of the
13 officer's duties in a public place or under
14 circumstances in which the officer has no reasonable
15 expectation of privacy and the person is not
16 interfering with the officer's ability to maintain
17 safety and control, secure crime scenes and accident
18 sites, protect the integrity and confidentiality of
19 investigations, and protect the public safety and
20 order;



- 1 (e) Installs or uses outside a private place any device,
2 including an unmanned aerial vehicle, for hearing,
3 recording, amplifying, or broadcasting sounds
4 originating in that place which would not ordinarily
5 be audible or comprehensible outside, without the
6 consent of the person or persons entitled to privacy
7 therein;
- 8 (f) Covertly records or broadcasts an image of another
9 person's intimate area underneath clothing, by use of
10 any device, including an unmanned aerial vehicle, and
11 that image is taken while that person is in a public
12 place and without that person's consent;
- 13 (g) Intercepts, without the consent of the sender or
14 receiver, a message or photographic image by
15 telephone, telegraph, letter, electronic transmission,
16 or other means of communicating privately; but this
17 paragraph does not apply to:
- 18 (i) Overhearing of messages through a regularly
19 installed instrument on a telephone party line or
20 an extension; or



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

6 (h) Divulges, without the consent of the sender or the
7 receiver, the existence or contents of any message or
8 photographic image by telephone, telegraph, letter,
9 electronic transmission, or other means of
10 communicating privately, if the accused knows that the
11 message or photographic image was unlawfully
12 intercepted or if the accused learned of the message
13 or photographic image in the course of employment with
14 an agency engaged in transmitting it; or

15 (i) Knowingly possesses materials created under
16 circumstances prohibited in section 711-1110.9."

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

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



S.B. NO. 2160

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

2

INTRODUCED BY: *Am. D. M.*
By Request



S.B. NO. 2160

Report Title:

Hawaii State Association of Counties Package; Unmanned Aerial Vehicles; Violation of Privacy; DCCA

Description:

Establishes a new chapter to regulate the use of unmanned aerial vehicles. Requires the director of the Department of Commerce and Consumer Affairs to adopt rules as necessary. Establishes prohibited uses of unmanned aerial vehicles and penalties, and authorizes civil action for violations. Makes certain uses of an unmanned aerial vehicle a misdemeanor. Clarifies that under certain circumstances, the used of an unmanned aerial vehicle may constitute an invasion of privacy.

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