

JAN 20 2017

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# 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 purpose of this Act is to establish  
2 unmanned aerial vehicle laws to protect personal information and  
3 residential privacy that complement federal rules and  
4 regulations.

5           The legislature finds that increased use of unmanned aerial  
6 vehicles raises questions of personal information protections  
7 and residential privacy. The Federal Aviation Administration  
8 released new regulations for small unmanned aircraft on June 21,  
9 2016. The new rule, part 107, addresses the use of commercial,  
10 non-hobbyist small unmanned aircraft operations. Part 107  
11 requires an operator to obtain remote pilot airman certification  
12 and be at least sixteen years old; limits operation of an  
13 unmanned aerial vehicle to daylight-only operations or thirty  
14 minutes before sunrise to thirty minutes after sunset, an  
15 altitude of four hundred feet, or higher if the drone remains  
16 within four hundred feet of a structure, and visibility of three  
17 miles; requires the unmanned aerial vehicle to always be within



1 unaided sight of the operator; and prohibits operation of an  
2 unmanned aerial vehicle over anyone who is not under a covered  
3 structure or inside a covered stationary vehicle and not  
4 directly participating in the operation. Recreational use of  
5 unmanned aerial vehicles is unaffected by part 107, and under  
6 section 336 of the Federal Aviation Administration Modernization  
7 and Reform Act of 2012, P.L. 112-95, section 336(a), an unmanned  
8 aerial vehicle that meets the statutory requirements for "model  
9 aircraft" is exempt from Federal Aviation Administration rules  
10 or regulations.

11 The legislature further finds that part 107 does not  
12 address privacy issues in the use of unmanned aerial vehicles  
13 and the Federal Aviation Administration does not regulate how  
14 unmanned aerial vehicles gather data on people or property.

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

18 "CHAPTER

19 UNMANNED AERIAL VEHICLES

20 § -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 any 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 does  
5 not carry a human operator, uses aerodynamic forces to provide  
6 vehicle lift, can fly autonomously, or be piloted remotely, and  
7 can be expendable or recoverable.

8 § -2 **Prohibited acts.** (a) No person or public agency  
9 shall operate an unmanned aerial vehicle:

10 (1) In violation of chapter 263 or part 107 or any other  
11 applicable federal laws and Federal Aviation  
12 Administration regulations relating to the operation  
13 of unmanned aerial vehicles;

14 (2) At a height of less than two hundred fifty feet above  
15 a residential property without express permission from  
16 the property owner or tenant;

17 (3) Outside of the period spanning thirty minutes before  
18 official sunrise to thirty minutes after official  
19 sunset in local time;

20 (4) Outside the visual line of sight of the operator. The  
21 operator shall use natural vision to maintain at all



1 times an unobstructed view of the unmanned aerial  
2 vehicle without the use of vision enhancing devices,  
3 including but not limited to binoculars, night vision  
4 goggles, powered vision magnifying devices, or similar  
5 devices; or

6 (5) To intentionally collect personal information or  
7 intentionally publish or distribute personal  
8 information acquired through the operation of an  
9 unmanned aerial vehicle without express written  
10 consent from the individual whose personal information  
11 is acquired.

12 (b) All data and personal information collected through  
13 the use of an unmanned aerial vehicle shall not be used or  
14 repurposed for any reason other than the original purpose for  
15 which the data or personal information was collected.

16 § -3 **Prohibited uses by law enforcement agencies;**  
17 **exceptions.** (a) No law enforcement agency shall use an  
18 unmanned aerial vehicle to gather evidence or other information  
19 pertaining to criminal conduct or conduct in violation of a  
20 statute, ordinance, or administrative rule without first  
21 obtaining a warrant.



1 (b) Notwithstanding subsection (a) and in addition to the  
2 authorized activities under section -4, a law enforcement  
3 agency may deploy an unmanned aerial vehicle for the following  
4 purposes:

5 (1) When there is a reasonable belief that an emergency  
6 situation exists, whether or not the situation  
7 involves criminal activity, and the use of an unmanned  
8 aerial vehicle is necessary to prevent immediate  
9 danger of death or serious physical injury to any  
10 person;

11 (2) To conduct a search and rescue operation where the use  
12 of an unmanned aerial vehicle is determined to be  
13 necessary to alleviate an immediate danger to any  
14 person;

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

16 (4) To conduct training exercises related to any of the  
17 purposes in this subsection.

18 § -4 **Public agency exceptions.** Nothing in this chapter  
19 shall prohibit the use of unmanned aerial vehicles by a public  
20 agency:



1 (1) To conduct environmental or disaster response,  
2 including but not limited to disaster relief, victim  
3 recovery or search and rescue, and monitoring,  
4 inspection, underwater repair, or structural damage  
5 assessments;

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

7 (3) To monitor plant or animal populations;

8 (4) To conduct atmospheric testing or monitoring; or

9 (5) For farming and agricultural uses.

10 § -5 **Business exceptions.** Nothing in this chapter shall  
11 prohibit the use of an unmanned aerial vehicle by a business or  
12 professional licensed in this State, or by an agent, employee,  
13 or contractor thereof, if the unmanned aerial vehicle is used  
14 only to perform reasonable tasks within the scope of practice or  
15 activities permitted under the business or professional license,  
16 including but not limited to:

17 (1) A property appraiser who uses the unmanned aerial  
18 vehicle solely for the purpose of assessing property  
19 taxes;

20 (2) A public utility that captures images for:



- 1 (A) Operations, inspections, and maintenance of
- 2 utility facilities;
- 3 (B) Assessing vegetation growth or conducting
- 4 environmental monitoring; or
- 5 (C) Utility routing, siting, or permitting for
- 6 utility construction or provision of service;
- 7 (3) Aerial mapping;
- 8 (4) Delivery of cargo; or
- 9 (5) Capture of images necessary for safe operation of an
- 10 unmanned aerial vehicle.

11 § -6 **Civil cause of action; remedies.** (a) An  
12 individual shall have a civil cause of action against any person  
13 that collects, publishes, or distributes the individual's  
14 personal information in violation of this chapter.

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

- 17 (1) Injunctive relief;
- 18 (2) Equitable relief;
- 19 (3) Compensatory damages;
- 20 (4) Punitive damages, except as prohibited by section
- 21 662-2;



- 1 (5) Costs of the action; and
- 2 (6) Reasonable attorney's fees."

3 SECTION 3. Chapter 711, Hawaii Revised Statutes, is  
4 amended by adding two new sections to be appropriately  
5 designated and to read as follows:

6 "§711-A Unmanned aerial vehicles; prohibited acts. (1)

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

14 (2) Any person violating this section shall be guilty of a  
15 petty misdemeanor for a first offense and for a second offense  
16 within two months of the first offense.

17 (3) Any person who commits a third or subsequent offense  
18 within two months of a prior offense shall be guilty of a  
19 misdemeanor.

20 §711-B Unmanned aerial vehicles; weapons; prohibited. (1)

21 It shall be unlawful for a person or public agency to equip an



1 unmanned aerial vehicle with a weapon or deploy an unmanned  
2 aerial vehicle that is equipped with a weapon.

3 (2) Violation of this section is a misdemeanor.

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

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

11 1. By adding a new definition to be appropriately inserted  
12 and to read:

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

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

18 "Record", for the purposes of sections 711-1110.9 [and],  
19 711-1111, and 711-A, means to videotape, film, photograph, or  
20 archive electronically or digitally."



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

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

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

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



- 1           (i) This paragraph shall not apply to images or  
2           videos of the depicted person made:  
3           (A) When the person was voluntarily nude in  
4           public or voluntarily engaging in sexual  
5           conduct in public; or  
6           (B) Pursuant to a voluntary commercial  
7           transaction; and  
8           (ii) Nothing in this paragraph shall be construed to  
9           impose liability on a provider of "electronic  
10          communication service" or "remote computing  
11          service" as those terms are defined in section  
12          803-41, for an image or video disclosed through  
13          the electronic communication service or remote  
14          computing service by another person."

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

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



- 1 (a) Trespasses on property for the purpose of subjecting  
2 anyone to eavesdropping or other surveillance in a  
3 private place;
- 4 (b) Peers or peeps into a window or other opening of a  
5 dwelling or other structure adapted for sojourn or  
6 overnight accommodations for the purpose of spying on  
7 the occupant thereof or invading the privacy of  
8 another person with a lewd or unlawful purpose, under  
9 circumstances in which a reasonable person in the  
10 dwelling or other structure would not expect to be  
11 observed;
- 12 (c) Trespasses on property for the sexual gratification of  
13 the actor;
- 14 (d) Installs or uses, or both, in any private place,  
15 without consent of the person or persons entitled to  
16 privacy therein, any means or device, including an  
17 unmanned aerial vehicle, for observing, recording,  
18 amplifying, or broadcasting sounds or events in that  
19 place other than another person in a stage of undress  
20 or sexual activity; provided that this paragraph shall  
21 not prohibit a person from making a video or audio



1 recording or taking a photograph of a law enforcement  
2 officer while the officer is in the performance of the  
3 officer's duties in a public place or under  
4 circumstances in which the officer has no reasonable  
5 expectation of privacy and the person is not  
6 interfering with the officer's ability to maintain  
7 safety and control, secure crime scenes and accident  
8 sites, protect the integrity and confidentiality of  
9 investigations, and protect the public safety and  
10 order;

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

18 (f) Covertly records or broadcasts an image of another  
19 person's intimate area underneath clothing, by use of  
20 any device, including an unmanned aerial vehicle, and



1 that image is taken while that person is in a public  
2 place and without that person's consent;

3 (g) Intercepts, without the consent of the sender or  
4 receiver, a message or photographic image by  
5 telephone, telegraph, letter, electronic transmission,  
6 or other means of communicating privately; but this  
7 paragraph does not apply to:

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

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

16 (h) Divulges, without the consent of the sender or the  
17 receiver, the existence or contents of any message or  
18 photographic image by telephone, telegraph, letter,  
19 electronic transmission, or other means of  
20 communicating privately, if the accused knows that the  
21 message or photographic image was unlawfully



1 intercepted or if the accused learned of the message  
 2 or photographic image in the course of employment with  
 3 an agency engaged in transmitting it; or

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

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

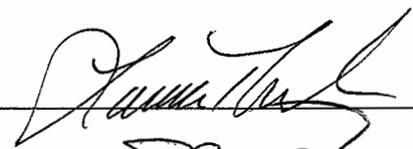
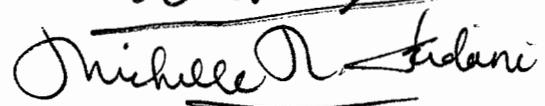
9 SECTION 8. In codifying the new sections added by section  
 10 3 of this Act, the revisor of statutes shall substitute  
 11 appropriate section numbers for the letters used in designating  
 12 the new sections in this Act.

13 SECTION 9. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect upon its approval.

16

INTRODUCED BY:



**Report Title:**

Unmanned Aerial Vehicles; Restrictions on Use; Violation of Privacy

**Description:**

Establishes restrictions on the 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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