

HOUSE BILL No. 2397

By Committee on Federal and State Affairs

3-4

1 AN ACT enacting the unmanned aerial vehicle regulation and privacy act.

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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 11, and amendments thereto, shall be
5 known and may be cited as the unmanned aerial vehicle regulation and
6 privacy act.

7 Sec. 2. As used in sections 1 through 11, and amendments thereto:

8 (a) "Governmental entity" means the state or a municipality as such
9 terms are defined in K.S.A. 75-6102, and amendments thereto, to include
10 law enforcement agencies but excluding the Kansas army and air national
11 guard.

12 (b) "Incidental collection" means the inadvertent or unintended
13 collection of sensor data on a person or property during an authorized
14 unmanned aerial vehicle operation.

15 (c) "Institution of higher education" means any Kansas accredited
16 institution that has educational programs concerning the manufacturing,
17 research and development, operational activities and other programs
18 directly related to the advancement of the unmanned aerial vehicle
19 industry.

20 (d) "Law enforcement agency" means any agency of a governmental
21 entity that is vested by law with the duty to maintain public order and
22 enforce criminal laws, including, but not limited to, any state investigative
23 agency, city police department, county sheriff's department, county law
24 enforcement department established pursuant to K.S.A. 19-4401 et seq.,
25 and amendments thereto, or law enforcement agency established by
26 consolidation of city and county powers pursuant to K.S.A. 12-340 et seq.,
27 and amendments thereto.

28 (e) "Private entity" means any civilian-owned entity that conducts
29 services involving the flight of unmanned aerial vehicles within Kansas.

30 (f) "Public entity" means any agency of a governmental entity or
31 contracted private entity that provides assistance to a governmental entity,
32 the Kansas army or air national guard or a law enforcement agency in
33 support to the general public, including, but not limited to, volunteer fire
34 departments and emergency medical service providers.

35 (g) "Sensor data" means any electro-optical, infrared, thermal,
36 ultraviolet or laser imagery, synthetic aperture radar, sound waves, air

1 composition and other data within the electromagnetic and radio frequency
2 spectrums regarding real property in Kansas or any individual located
3 thereon.

4 (h) "Unmanned aerial vehicle" means any craft capable of flight
5 without a human operator, passenger or other individual physically on
6 board operating within the national airspace system as defined by the
7 federal aviation administration.

8 Sec. 3. (a) No unmanned aerial vehicle shall be operated in Kansas
9 except as provided by sections 1 through 11, and amendments thereto.

10 (b) No unmanned aerial vehicle shall be operated in Kansas if such
11 unmanned aerial vehicle is capable of firing a bullet, projectile or laser or
12 otherwise being used as a weapon or avenue to inflict harm or damage to
13 any person or property.

14 (c) Any operation of an unmanned aerial vehicle shall comply with
15 all applicable federal aviation administration requirements.

16 Sec. 4. (a) It shall be lawful for the Kansas army and air national
17 guard and all other branches of the United States armed forces to conduct
18 unmanned aerial vehicle operations as part of a mission or exercise in
19 Kansas, provided that all regulatory requirements and directives of each
20 operation or exercise are met. Nothing in sections 1 through 11, and
21 amendments thereto, shall:

22 (1) Limit the Kansas army and air national guard in their ability to
23 accomplish mission sets relating to incident, awareness and assessment
24 and defense support to civil authorities.

25 (2) prohibit the Kansas army and air national guard from contracting
26 with institutions of higher education or private entities to augment national
27 guard operations to ensure more effective operations and greater safety for
28 individuals in Kansas; or

29 (3) prohibit the Kansas army and air national guard from contracting
30 with institutions of higher education or private entities to conduct training
31 and exercise scenarios on restricted military ranges, provided that such
32 scenarios have been approved by the federal aviation administration and
33 the national guard bureau.

34 Sec. 5. (a) It shall be lawful under sections 1 through 11, and
35 amendments thereto, for an agency of a governmental entity to:

36 (1) Seek and acquire unmanned aerial vehicles only after such
37 governmental entity obtains prior approval by the legislative body
38 overseeing such governmental entity;

39 (2) contract with a private entity to conduct approved unmanned
40 aerial vehicle operations in lieu of physically acquiring an unmanned
41 aerial vehicle as an asset of such governmental entity;

42 (3) disclose or receive information regarding a person acquired by
43 unmanned aerial vehicle operations if such person has given written

1 consent to such disclosure;

2 (4) operate an unmanned aerial vehicle and to receive or disclose
3 information gathered from such operation if the operation is conducted in
4 circumstances creating a reasonable belief that there is an imminent threat
5 to the life or safety of a person and that such operation would assist such
6 person, subject to the following limitations:

7 (A) The governmental entity's request to conduct the operation shall
8 document the factual basis for the emergency; and

9 (B) a supervisory official within the governmental entity shall file a
10 sworn statement with the appropriate district court setting forth the
11 grounds for the emergency operation not later than 48 hours after the
12 operation commences;

13 (5) operate an unmanned aerial vehicle and disclose information
14 gathered from such operation to collect information from a public area
15 pursuant to a warrant issued pursuant to K.S.A. 22-2502 et seq., and
16 amendments thereto, or pursuant to an order issued by a court of
17 competent jurisdiction if such agency of a governmental entity offers
18 specific and articulable facts demonstrating reasonable suspicion of
19 criminal activity and that operation of an unmanned aerial vehicle will
20 uncover such activity, provided that:

21 (A) Such an order shall not be issued for a period greater than 72
22 hours; and

23 (B) a court may issue an extension of such an order for no longer than
24 the authorizing judge deems necessary to achieve the purposes for which
25 the order was granted and in no event for longer than 30 days;

26 (6) operate an unmanned aerial vehicle and disclose information
27 gathered from such operation if no part of any information and no
28 evidence derived from such operation may be used for any intelligence
29 purpose or be received in evidence in any trial, hearing or other proceeding
30 in or before any court, grand jury, department, officer, agency, regulatory
31 body, legislative committee or other authority of the state of Kansas or a
32 municipality thereof;

33 (7) operate an unmanned aerial vehicle:

34 (A) If the governmental entity possesses reasonable suspicion that
35 swift action is necessary to prevent injury to a person, imminent danger to
36 life or property loss or damage;

37 (B) to counter a risk of a terrorist attack by a specific individual or
38 organization if the United States secretary of homeland security
39 determines that credible intelligence indicates such a risk;

40 (C) to provide continuous coverage when a governmental entity is
41 searching for a fugitive or escapee or is monitoring a hostage or barricaded
42 subject situation;

43 (D) to provide more expansive coverage for the purpose of searching

1 for a missing person or an identified pattern of criminal activity; or

2 (E) to address other exigent circumstances in which probable cause
3 exists that a crime is being committed; or

4 (8) utilize and conduct unmanned aerial vehicle operations for the
5 purpose of traffic incident assessments, highway infrastructure integrity
6 and traffic control measures to include using radar in rural areas in
7 addition to or in lieu of manned aircraft operations used for such purposes.

8 (b) When unmanned aerial vehicles are operated pursuant to this
9 section, such operations shall be conducted in a manner to collect data
10 only regarding the target and to avoid data collection on individuals,
11 homes or areas other than the target. Facial recognition and other biometric
12 matching technology shall not be used on non-target data collected by an
13 unmanned aerial vehicle. Incidental collection must be kept to a minimum
14 and must not be retained or received as evidence in any trial, hearing or
15 other proceeding in or before any court, grand jury, department, officer,
16 agency, regulatory body, legislative committee or other authority of the
17 state of Kansas or a municipality thereof.

18 (c) The use of an unmanned aerial vehicle to gather evidence or
19 information that is not otherwise lawfully accessible in plain view shall
20 constitute a search. Any governmental entity that uses an unmanned aerial
21 vehicle to gather evidence or obtain sensor data shall comply in all
22 respects with the United States constitution and the constitution of the state
23 of Kansas.

24 (d) Any personal information obtained by a governmental entity's
25 operation of an unmanned aerial vehicle shall not be subject to disclosure
26 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
27 amendments thereto.

28 Sec. 6. Except as provided in subsection (b), it shall be unlawful for
29 an agency of a public entity to operate an unmanned aerial vehicle or to
30 disclose or receive information acquired through the operation of an
31 unmanned aerial vehicle.

32 (b) It shall be lawful under this act for a public entity to:

33 (1) Conduct unmanned aerial vehicle operations for purposes that
34 directly relate to such public entity's daily operations that would be
35 enhanced by utilization of unmanned aerial vehicle technology; and

36 (2) to acquire and employ unmanned aerial vehicle systems by
37 internal means or by contracting with private entities.

38 Sec. 7. (a) Except as provided in subsection (c), it shall be unlawful
39 for an agency of a private entity to operate an unmanned aerial vehicle or
40 to disclose or receive information acquired through the operation of an
41 unmanned aerial vehicle.

42 (b) Unless under contract with a governmental entity, no private
43 entity shall collect or retain sensor data on any person. Incidental

1 collection by a private entity shall not be deemed a violation of this act.
2 Such incidental collection must be kept to a minimum and may not be
3 retained by the private entity.

4 (c) It shall be lawful under this act for an agency of a private entity to
5 conduct unmanned aerial vehicle operations for commercial purposes,
6 provided that:

7 (1) Such private entity complies with all federal aviation
8 administration regulations that would authorize such entity to operate
9 within the national airspace; and

10 (2) such private entity obtains written approval from any private land
11 owner upon whose land an unmanned aerial vehicle will be operated not
12 later than 24 hours prior to such operation.

13 Sec. 8. (a) Except as provided in section 4 and subsection (b), it shall
14 be unlawful for an agent of an institution of higher education to conduct
15 unmanned aerial vehicle operations or to disclose or receive information
16 acquired through the operation of an unmanned aerial vehicle.

17 (b) It shall be lawful under this act for an institution of higher
18 education to conduct unmanned aerial vehicle operations for the purpose
19 of training and educating students in the field of unmanned aerial systems
20 in furtherance of a degree, provided that:

21 (1) Such institution of higher education conducts such operations in a
22 federal aviation administration approved area or other restricted military
23 airspace and in compliance with all applicable federal aviation
24 administration regulations; and

25 (2) such institution of higher education obtains written approval from
26 any private land owner upon whose land an unmanned aerial vehicle will
27 be operated not later than 48 hours prior to such operation.

28 (c) An institution of higher education may contract with a private
29 entity otherwise authorized to conduct unmanned aerial vehicle operations
30 to facilitate training and provide service solutions for the institution.

31 Sec. 9. (a) Any person whose person or property has been the subject
32 of information gathered by an unmanned aerial vehicle in violation of
33 sections 1 through 11, and amendments thereto, shall have a civil cause of
34 action against the person or persons responsible for such violation. The
35 person aggrieved may:

36 (1) Enjoin a violation or imminent violation of this act;

37 (2) recover a civil penalty of:

38 (A) \$5,000 for all images captured in a single episode in violation of
39 this act; or

40 (B) \$10,000 for disclosure, display, distribution or other use of any
41 images captured in a single episode in violation of this act; or

42 (3) recover actual damages if the person who captured the image in
43 violation of this act disclosed, displayed or distributed the image with

1 malice.

2 (b) A court may award costs and reasonable attorney fees to the
3 prevailing party in an action commenced pursuant to subsection (a).

4 (c) Incidental collection shall be exempt from civil liability under this
5 section unless such data is retained or disclosed in violation of this act.

6 Sec. 10. Any person who operates an unmanned aerial vehicle in
7 violation of sections 3, 6, 7 or 8, and amendments thereto, resulting in
8 physical, emotional, intellectual or other damage to persons or property
9 shall be guilty of a severity level 5, nonperson felony.

10 Sec. 11. The attorney general, in consultation with the adjutant
11 general, shall create a program of public information and education
12 communicating to the public the benefits realized by the state through
13 operation of unmanned aerial vehicles, the technology used in unmanned
14 aerial vehicle operations and the steps taken to address privacy issue
15 concerns. Such information shall be made available on the attorney
16 general's official internet website or through some other form widely
17 accessible to the public.

18 Sec. 12. This act shall take effect and be in force from and after its
19 publication in the statute book.