

SB0111S03 compared with SB0111S02

~~text~~ shows text that was in SB0111S02 but was deleted in SB0111S03.

Inserted text shows text that was not in SB0111S02 but was inserted into SB0111S03.

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Senator Wayne A. Harper proposes the following substitute bill:

UNMANNED AIRCRAFT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill modifies and establishes provisions related to unmanned aircraft.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ reorganizes existing code related to unmanned aircraft;
- ▶ preempts local laws related to unmanned aircraft;
- ▶ exempts unmanned aircraft from registration with the state of Utah;
- ▶ enacts provisions related to operation of unmanned aircraft by law enforcement, including:
 - data collection, reporting, retention, and use;
 - use of an unmanned aircraft for law enforcement operations; and

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- use of data obtained by an unmanned aircraft operated by a civilian;
- ▶ establishes certain safety requirements and limitations for the operation of an unmanned aircraft;
- ▶ prohibits use of an unmanned aircraft equipped with a weapon;
- ▶ prohibits a person from:
 - committing trespass with an unmanned aircraft;
 - committing a privacy violation with an unmanned aircraft; or
 - committing voyeurism with an unmanned aircraft;
- ▶ establishes criminal penalties; and
- ▶ makes technical changes

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-10-109, as renumbered and amended by Laws of Utah 1998, Chapter 270

76-6-206, as last amended by Laws of Utah 2015, Chapter 412

76-9-402, as enacted by Laws of Utah 1973, Chapter 196

76-9-702.7, as last amended by Laws of Utah 2004, Chapter 52

ENACTS:

72-14-103, Utah Code Annotated 1953

72-14-104, Utah Code Annotated 1953

72-14-201, Utah Code Annotated 1953

72-14-202, Utah Code Annotated 1953

72-14-205, Utah Code Annotated 1953

72-14-301, Utah Code Annotated 1953

72-14-302, Utah Code Annotated 1953

72-14-303, Utah Code Annotated 1953

72-14-401, Utah Code Annotated 1953

72-14-402, Utah Code Annotated 1953

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72-14-403, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

72-14-101, (Renumbered from 63G-18-101, as last amended by Laws of Utah 2016, Chapter 101)

72-14-102, (Renumbered from 63G-18-102, as last amended by Laws of Utah 2015, Chapter 269)

72-14-203, (Renumbered from 63G-18-103, as last amended by Laws of Utah 2015, Chapter 269)

72-14-204, (Renumbered from 63G-18-104, as last amended by Laws of Utah 2015, Chapter 269)

REPEALS:

63G-18-105, as last amended by Laws of Utah 2015, Chapter 269

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **72-10-109** is amended to read:

72-10-109. Certificate of registration of aircraft required -- Exceptions.

(1) (a) A person may not operate, pilot, or navigate, or cause or authorize to be operated, piloted, or navigated within this state any civil aircraft located in this state unless the aircraft has a current certificate of registration issued by this state through the county in which the aircraft is located.

(b) This restriction does not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of the registered aircraft or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the Federal Aviation Administration to be made without the certificate of registration.

(2) Aircraft assessed by the State Tax Commission are exempt from the state registration requirement under Subsection (1).

(3) Unmanned aircraft as defined in Section 72-14-102 are exempt from the state registration requirement under Subsection (1).

Section 2. Section **72-14-101**, which is renumbered from Section 63G-18-101 is renumbered and amended to read:

CHAPTER 14. UNMANNED AIRCRAFT -- DRONES

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Part 1. General Provisions

~~[63G-18-101].~~ 72-14-101. Title.

This chapter is known as "Unmanned Aircraft -- Drones."

Section 3. Section 72-14-102, which is renumbered from Section 63G-18-102 is renumbered and amended to read:

~~[63G-18-102].~~ 72-14-102. Definitions.

As used in this chapter:

~~[(1) "Law enforcement agency" means an entity of the state or an entity of a political subdivision of the state, including an entity of a state institution of higher education, that exists primarily to prevent, detect, or prosecute crime and enforce criminal statutes or ordinances.]~~

~~[(2) "Nongovernment actor" means a person that is not:]~~

~~[(a) an agency, department, division, or other entity within state government;]~~

~~[(b) a person employed by or otherwise acting in an official capacity on behalf of the state;]~~

~~[(c) a political subdivision of the state; or]~~

~~[(d) a person employed by or otherwise acting in an official capacity on behalf of a political subdivision of the state.]~~

~~[(3) "Target" means a person upon whom, or a structure or area upon which, a person:]~~

~~[(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or]~~

~~[(b) plans to collect or attempt to collect information through the operation of an unmanned aircraft system.]~~

~~[(4) "Testing site" means an area that:]~~

~~[(a) has boundaries that are clearly identified using GPS coordinates;]~~

~~[(b) a law enforcement agency identifies in writing to the Department of Public Safety, including the boundaries identified under Subsection (4)(a);]~~

~~[(c) is not more than three square miles; and]~~

~~[(d) contains no occupied structures.]~~

(1) "Airport" means the same as that term is defined in Section 72-10-102.

(2) "Airport operator" means the same as that term is defined in Section 72-10-102.

~~[(5)(a)]~~ (3) "Unmanned aircraft [system]" means an aircraft that is:

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~~[(+)] (a) [is] capable of sustaining flight; and~~

~~[(+)] (b) [operates] operated with no possible direct human intervention from on or within the aircraft.~~

~~[(b)] (4) "Unmanned aircraft system" [does not include an unmanned aircraft that is flown] means the entire system used to operate an unmanned aircraft, including:~~

~~[(i) within visual line of sight of the individual operating the aircraft; and]~~

~~[(ii) strictly for hobby or recreational purposes.]~~

~~(a) the unmanned aircraft, including payload;~~

~~(b) communications equipment;~~

~~(c) navigation equipment;~~

~~(d) controllers;~~

~~(e) support equipment; and~~

~~(f) autopilot functionality.~~

Section 4. Section **72-14-103** is enacted to read:

72-14-103. Preemption of local ordinance.

(1) A political subdivision of the state, or an entity within a political subdivision of the state, may not enact a law, ordinance, or rule governing the private use of an unmanned aircraft unless:

(a) authorized by this chapter; or

(b) the political subdivision or entity is an airport operator that enacts the law, rule, or ordinance to govern:

(i) the operation of an unmanned aircraft within the geographic boundaries of the airport over which the airport operator has authority; or

(ii) the takeoff or landing of an unmanned aircraft at the airport over which the airport operator has authority.

(2) This chapter supersedes any law, ordinance, or rule enacted by a political subdivision of the state before July 1, 2017.

Section 5. Section **72-14-104** is enacted to read:

72-14-104. Applicability.

~~{The following parts do}~~ This chapter does not apply to a person ~~{who operates}~~ or business entity:

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(1) using an unmanned aircraft ~~{system, including }~~ for legitimate educational or ~~{commercial}~~ business purposes ~~{, under a Certificate of Waiver, Certificate of Authorization, remote pilot certificate with a small}~~; and

(2) operating the unmanned aircraft system ~~{rating, or any other grant of authority obtained from the}~~ in a manner consistent with applicable Federal Aviation Administration ~~{that specifically authorizes the operation of the unmanned aircraft system:~~

~~—— (1) Title 72, Chapter 14, Part 3, Unlawful Use of Unmanned Aircraft; and~~

~~—— (2) Title 72, Chapter 14, Part 4, Safe Use of Unmanned Aircraft}~~rules, exemptions, or other authorizations.

Section 6. Section **72-14-201** is enacted to read:

Part 2. Law Enforcement Use of Unmanned Aircraft

72-14-201. Title.

This part is known as "Law Enforcement Use of Unmanned Aircraft."

Section 7. Section **72-14-202** is enacted to read:

72-14-202. Definitions.

As used in this part:

(1) "Civilian" means a person that is not a law enforcement officer.

(2) "Law enforcement agency" means the same as that term is defined in Section 53-3-102.

(3) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(4) "Target" means a person upon whom, or an object, structure, or area upon which, another person:

(a) has intentionally collected or attempted to collect information through the operation of an unmanned aircraft system; or

(b) intends to collect or to attempt to collect information through the operation of an unmanned aircraft system.

Section 8. Section **72-14-203**, which is renumbered from Section 63G-18-103 is renumbered and amended to read:

~~[63G-18-103].~~ **72-14-203. Unmanned aircraft system use requirements -- Exceptions.**

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(1) A law enforcement agency or officer may not obtain, receive, or use data acquired through an unmanned aircraft system unless the data is obtained:

- (a) pursuant to a search warrant;
- (b) in accordance with judicially recognized exceptions to warrant requirements;
- (c) subject to Subsection (2), from a person who is a nongovernment actor;

~~[(d) at a testing site; or]~~

~~[(e)]~~ (d) to locate a lost or missing person in an area in which a person has no reasonable expectation of privacy~~[-]; or~~

(e) for purposes unrelated to a criminal investigation.

~~[(2) A nongovernment actor may only disclose data acquired through an unmanned aircraft system to a law enforcement agency if:]~~

(2) A law enforcement officer or agency may only use for law enforcement purposes data obtained from a nongovernment actor if:

- (a) the data appears to pertain to the commission of a crime; or
- (b) the ~~[nongovernment actor]~~ law enforcement agency or officer believes, in good faith, that:

(i) the data pertains to an imminent or ongoing emergency involving danger of death or serious bodily injury to an individual; and

(ii) disclosing the data would assist in remedying the emergency.

(3) A law enforcement agency or officer that obtains, receives, or uses data acquired ~~[under Subsection (1)(d) or (e)]~~ through the use of an unmanned aircraft system or through Subsection (2) shall destroy the data as soon as reasonably possible after the law enforcement agency or officer obtains, receives, or uses the data subject to an applicable retention schedule under Title 63G, Chapter 2, Government Records Access and Management Act, or a federal, state, or local law.

~~[(4) A law enforcement agency that operates an unmanned aircraft system under Subsection (1)(d) may not operate the unmanned aircraft system outside of the testing site.]~~

Section 9. Section **72-14-204**, which is renumbered from Section 63G-18-104 is renumbered and amended to read:

~~[63G-18-104].~~ **72-14-204. Data retention.**

(1) Except as provided in this section, a law enforcement agency:

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(a) may not use, copy, or disclose data collected by an unmanned aircraft system on a person, structure, or area that is not a target; and

(b) in accordance with applicable federal, state, and local laws, shall ensure that data described in Subsection (1)(a) is destroyed as soon as reasonably possible after the law enforcement agency collects or receives the data.

(2) A law enforcement agency is not required to comply with Subsection (1) if:

(a) deleting the data would also require the deletion of data that:

(i) relates to the target of the operation; and

(ii) is requisite for the success of the operation;

(b) the law enforcement agency receives the data:

(i) through a court order that:

(A) requires a person to release the data to the law enforcement agency; or

(B) prohibits the destruction of the data; or

(ii) from a person who is a nongovernment actor;

(c) (i) the data was collected inadvertently; and

(ii) the data appears to pertain to the commission of a crime;

(d) (i) the law enforcement agency reasonably determines that the data pertains to an emergency situation; and

(ii) using or disclosing the data would assist in remedying the emergency; or

(e) the data was collected through the operation of an unmanned aircraft system over public lands outside of municipal boundaries.

Section 10. Section **72-14-205** is enacted to read:

72-14-205. Reporting.

(1) As used in this section, "law enforcement encounter" means the same as that term is defined in Section 77-7a-103.

(2) A law enforcement officer or agency that operates an unmanned aircraft system while on duty or acting in the law enforcement officer's or agency's official capacity, or obtains or receives data in accordance with Section 72-14-203, shall document the following in any report or other official record of the law enforcement encounter:

(a) the presence and use of the unmanned aircraft;

(b) any data acquired; and

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(c) if applicable, the person from whom data was received in accordance with Subsection 72-14-203(2).

Section 11. Section **72-14-301** is enacted to read:

Part 3. Unlawful Use of Unmanned Aircraft

72-14-301. Title.

This part is known as "Unlawful Use of Unmanned Aircraft."

Section 12. Section **72-14-302** is enacted to read:

72-14-302. Reserved.

Reserved.

Section 13. Section **72-14-303** is enacted to read:

72-14-303. Weapon attached to unmanned aircraft -- Penalties.

(1) As used in this section "weapon" means:

(a) a firearm as described in Section 76-10-501; or

(b) an object that in the manner of the object's use or intended use is capable of causing death, bodily injury, or damage to property, as determined according to the following factors:

(i) the location and circumstances in which the object is used or possessed;

(ii) the primary purpose for which the object is made;

(iii) the character of the damage, if any, the object is likely to cause;

(iv) the manner in which the object is used;

(v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and

(vi) the lawful purposes for which the object may be used.

(2) (a) Except as provided in Subsection (3), a person may not fly an unmanned aircraft that carries a weapon or to which a weapon is attached.

(b) A person that violates Subsection (2)(a) is guilty of a class B misdemeanor.

(3) A person may fly an unmanned aircraft that carries a weapon or to which a weapon is attached if the person:

(a) (i) obtains a certificate of authorization, or other written approval, from the Federal Aviation Administration authorizing the person to fly the unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the certificate of authorization or

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other written approval;

(b) (i) obtains a contract with the state or the federal government permitting the person to fly the unmanned aircraft that carries the weapon or to which the weapon is attached; and

(ii) operates the unmanned aircraft in accordance with the contract; or

(c) operates the unmanned aircraft that carries the weapon or to which the weapon is attached in airspace controlled by the United States Department of Defense, with the permission of the United States Department of Defense.

Section 14. Section **72-14-401** is enacted to read:

Part 4. Safe Use of Unmanned Aircraft

72-14-401. Title.

This part is known as "Safe Use of Unmanned Aircraft."

Section 15. Section **72-14-402** is enacted to read:

72-14-402. Reserved.

Reserved.

Section 16. Section **72-14-403** is enacted to read:

72-14-403. Safe operation of unmanned aircraft.

(1) An individual who operates an unmanned aircraft system to fly an unmanned aircraft for recreational purposes shall comply with this section and 14 C.F.R. Sec. 101, Subpart E.

(2) An individual operating an unmanned aircraft shall:

(a) maintain visual line of sight of the unmanned aircraft in order to:

(i) know the location of the unmanned aircraft;

(ii) determine the attitude, altitude, and direction of flight;

(iii) observe the airspace for other air traffic or hazards; and

(iv) determine that the unmanned aircraft does not endanger the life or property of another person;

(b) ensure that the ability described in Subsection (2)(a)(i) is exercised by either:

(i) the operator of the unmanned aircraft; or

(ii) a visual observer.

(3) An individual may not operate an unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated

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for an airport unless the operator of the unmanned aircraft has prior authorization from air traffic control.

(4) An individual may not operate an unmanned aircraft in a manner that interferes with operations and traffic patterns at any airport, heliport, or seaplane base.

(5) An individual may not operate an unmanned aircraft system:

(a) from ~~+~~ or around a public transit rail platform or station; or

(b) (i) under a height of 50 feet within a public transit fixed guideway right-of-way; and

(ii) directly above any overhead electric lines used to power a public transit rail vehicle.

(6) An individual may not operate an unmanned aircraft in violation of a notice to airmen described in 14 C.F.R. Sec. 107.47.

(7) An individual may not operate an unmanned aircraft at an altitude that is higher than 400 feet above ground level unless the unmanned aircraft:

(a) is flown within a 400-foot radius of a structure; and

(b) does not fly higher than 400 feet above the structure's immediate uppermost limit.

(8) (a) An individual who violates this section is liable for any damages that may result from the violation.

(b) A law enforcement officer shall issue a written warning to an individual who violates this section who has not previously received a written warning for a violation of this section.

(c) Except as provided in Subsection (8)(d), an individual who violates this section after receiving a written warning for a previous violation of this section is guilty of an infraction.

(d) An individual who violates this section is guilty of a class B misdemeanor for each conviction of a violation of this section after the individual is convicted of an infraction or a misdemeanor for a previous violation of this section.

Section 17. Section **76-6-206** is amended to read:

76-6-206. Criminal trespass.

(1) As used in this section ~~[-~~ "enter":

(a) "Enter" means intrusion of the entire body ~~[-]~~ or the entire unmanned aircraft.

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(b) "Remain unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

(i) the private property or any portion of the private property is not open to the public;
and

(ii) the person operating the unmanned aircraft is not otherwise authorized to fly the unmanned aircraft over the private property or any portion of the private property.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the person enters or remains unlawfully on or causes an unmanned aircraft to enter and remain unlawfully over property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether [~~his~~] the person's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the person's or unmanned aircraft's entry or presence is unlawful, the person enters or remains on [~~property as~~] or causes an unmanned aircraft to enter or remain unlawfully over property to which notice against entering is given by:

(i) personal communication to the [~~actor~~] person by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

(3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless [~~it was~~] the violation is committed in a dwelling, in which event [~~it~~] the violation is a class A misdemeanor.

(b) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was at the time open to the public; and

(b) the actor complied with all lawful conditions imposed on access to or remaining on

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the property.

Section 18. Section **76-9-402** is amended to read:

76-9-402. Privacy violation.

(1) A person is guilty of privacy violation if, except as authorized by law, ~~[he]~~ the person:

(a) trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; ~~[or]~~

(b) ~~[Installs in any]~~ installs, or uses after unauthorized installation in a private place, without the consent of the person or persons entitled to privacy ~~[there]~~ in the private place, any device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events in the ~~[place or uses any such unauthorized installation]~~ private place; or

(c) installs or uses outside of a private place ~~[any]~~ a device for observing, photographing, hearing, recording, amplifying, or broadcasting sounds or events originating in the private place which would not ordinarily be audible, visible or comprehensible outside the private place, without the consent of the person or persons entitled to privacy ~~[there]~~ in the private place.

(2) A person is not guilty of a violation of this section if:

(a) the device used is an unmanned aircraft;

(b) the person is operating the unmanned aircraft for legitimate commercial or educational purposes in a manner consistent with applicable Federal Aviation Administration rules, exemptions, or other authorizations; and

(c) any conduct described in Subsection (1) that occurs via the unmanned aircraft is solely incidental to the lawful commercial or educational use of the unmanned aircraft.

~~[(2)]~~ (3) Privacy violation is a class B misdemeanor.

Section 19. Section **76-9-702.7** is amended to read:

76-9-702.7. Voyeurism offenses -- Penalties.

(1) A person is guilty of voyeurism who intentionally uses ~~[a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual]~~ any type of technology to secretly or surreptitiously record video of a person:

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(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

Section 20. Repealer.

This bill repeals:

Section 63G-18-105, Reporting.