

ESHB 1093 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that technological
4 developments in unmanned aircraft have expanded the vehicles'
5 capacity to be widely deployed in our state and in our communities.
6 The legislature further finds that while the federal aviation
7 administration modernization and reform act of 2012 establishes a
8 regulatory framework for the use of unmanned aircraft by public
9 agencies and commercial entities, the recreational use of certain
10 small unmanned aircraft outside of federally controlled airspace is
11 exempt from federal regulation. The potential for these small
12 unmanned aircraft to be operated in close proximity to human
13 dwellings and activities presents opportunities for widespread
14 recreational use and enjoyment. At the same time, the recreational
15 use of unmanned aircraft in Washington state airspace increases the
16 likelihood of physical trespass onto private property and invasions
17 of personal privacy. The legislature intends to protect personal
18 privacy by prohibiting the use of unmanned aircraft equipped with
19 sensing devices that collect personal information, including images
20 of individuals on private property that could not have been captured
21 without the assistance of the unmanned aircraft.

22 The legislature finds and declares that except as otherwise
23 required by the first amendment of the United States Constitution,
24 the reasonable expectation of privacy of a person whose image has
25 been captured, when the person is on private property and the
26 landowner and tenants with a right to occupy the private property
27 have not consented to the capture of images of the person on the
28 property, has been violated when the image could not have been
29 captured from outside the boundaries of the property on which the
30 person is located, from an ordinary vantage point, and without the
31 assistance of the unmanned aircraft.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires
3 otherwise.

4 (1) "Active sensing device" means a sensing device that is
5 acquiring personal information from its surroundings. A sensing
6 device is not an "active sensing device" when it is capable of
7 acquiring personal information from its surroundings, but this
8 functionality is dormant or has not been activated.

9 (2) "Person" means a natural person.

10 (3) "Personal information" means:

11 (a) Any information that describes, locates, or indexes anything
12 about a person including, but not limited to, his or her social
13 security number, driver's license number, agency-issued
14 identification number, student identification number, real or
15 personal property holdings derived from tax returns, and his or her
16 education, financial transactions, medical history, ancestry,
17 religion, political ideology, or criminal or employment record; or

18 (b) Any image of a person taken from any location in the
19 Washington state airspace, when the person whose image has been
20 captured is on private property, the landowner and tenants with a
21 right to occupy the private property have not consented to the
22 capture of images of their person on the property, and the taking of
23 such an image is in violation of the reasonable expectation of
24 privacy of the person.

25 (4)(a) "Sensing device" means a device capable of acquiring
26 personal information from its surroundings through any means
27 including, but not limited to, cameras, thermal detectors,
28 microphones, chemical detectors, radiation gauges, and wireless
29 receivers in any frequency.

30 (b) "Sensing device" does not include equipment, the sole
31 function of which is to provide information directly necessary for
32 safe air navigation or piloting of an unmanned aircraft.

33 (5) "Unmanned aircraft" means an aircraft that is operated
34 without physical human presence on board the aircraft.

35 (6) "Washington state airspace" means all airspace within the
36 territorial limits of this state that is within class G airspace and
37 not otherwise classified as controlled by the federal aviation
38 administration.

1 NEW SECTION. **Sec. 3.** (1) No person may operate an unmanned
2 aircraft in Washington state airspace that is equipped with an active
3 sensing device unless:

4 (a) The federal government has provided specific authorization
5 for the operation; or

6 (b) The operation complies with each of the conditions
7 established in section 4 of this act.

8 (2) For purposes of subsection (1) of this section and section 4
9 of this act, "specific authorization" by the federal government
10 includes authorization issued pursuant to the federal aviation
11 administration modernization and reform act of 2012 (49 U.S.C. 40101)
12 or other federal authority establishing that the operation is lawful
13 and permitted under federal law, except that "specific
14 authorization" does not include operation of an unmanned aircraft
15 pursuant to the exemption from regulation for recreational uses
16 established in the special rule for model aircraft of the federal
17 aviation administration modernization and reform act of 2012 (49
18 U.S.C. 40101 Sec. 336).

19 (3) Nothing in this chapter may be construed as authorizing the
20 use of, prohibiting the use of, or regulating in any manner the use
21 of an unmanned aircraft by a public agency.

22 NEW SECTION. **Sec. 4.** An unmanned aircraft may not be operated
23 in Washington state airspace unless the following conditions are met:

24 (1) The unmanned aircraft has specific authorization from the
25 federal government, as defined in section 3 of this act; or

26 (2) The unmanned aircraft is clearly and conspicuously labeled
27 with the name and contact information of the aircraft's owner and
28 operator and does not have an active sensing device onboard that
29 collects personal information about any individual without the
30 individual's consent.

31 NEW SECTION. **Sec. 5.** Any person who violates the requirements
32 of section 4 of this act with the intent to capture any type of
33 personal information of another person for an illicit purpose,
34 including a commercial purpose where the commercial use of the
35 unmanned aircraft is not compliant with the requirements of the
36 federal aviation administration modernization and reform act of 2012
37 or other applicable law, is guilty of a misdemeanor, in addition to
38 any other penalty provided by law.

1 NEW SECTION. **Sec. 6.** In addition to any other remedies
2 authorized by law, an individual whose reasonable expectation of
3 privacy is violated by the use of an unmanned aircraft equipped with
4 an active sensing device in violation of the requirements of this
5 chapter may bring an action for damages from the person who committed
6 the violation. The person may recover actual damages or liquidated
7 damages of five thousand dollars, whichever is greater, and an award
8 of costs and reasonable attorneys' fees.

9 NEW SECTION. **Sec. 7.** The remedy provided by this chapter does
10 not restrict any remedy that is otherwise available. The provisions
11 of this chapter are not exclusive and are in addition to any other
12 requirements, rights, remedies, and penalties provided by law.

13 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act
14 constitute a new chapter in Title 14 RCW.

15 NEW SECTION. **Sec. 9.** Nothing in this act shall be construed to
16 apply to activities including but not limited to agriculture,
17 forestry, logging, fishing, construction, transportation, utilities,
18 manufacturing, and other lawful activities that may use unmanned
19 aircraft with active sensing devices.

20 NEW SECTION. **Sec. 10.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected."

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24 On page 1, line 1 of the title, after "aircraft;" strike the
25 remainder of the title and insert "adding a new chapter to Title 14
26 RCW; creating a new section; and prescribing penalties."

EFFECT: Adds a new section clarifying that nothing in this act shall be construed to apply to activities including but not limited to agriculture, forestry, logging, fishing, construction,

transportation, utilities, manufacturing, and other lawful activities that may use unmanned aircraft with active sensing devices.

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