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HOUSE BILL 69

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Dayan Hochman-Vigil

AN ACT

RELATING TO UNMANNED AIRCRAFT SYSTEMS; ENACTING THE UNMANNED AIRCRAFT SYSTEMS USE AND PRIVACY SAFEGUARDING ACT; PROVIDING RESTRICTIONS ON CERTAIN USES OF UNMANNED AIRCRAFT SYSTEMS; PROVIDING IMMUNITY FROM LIABILITY FOR DAMAGES CAUSED BY FIRST RESPONDERS IN CERTAIN SITUATIONS; REQUIRING THE DEPARTMENT OF PUBLIC SAFETY TO COMPLETE A STUDY ON THE USE OF UNMANNED AIRCRAFT SYSTEMS BY THE STATE AND LOCAL GOVERNMENTS; PROVIDING PENALTIES; IMPOSING CIVIL LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Unmanned Aircraft Systems Use and Privacy Safeguarding Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Unmanned Aircraft Systems Use and Privacy Safeguarding Act:

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1 A. "community-based organization" means an
2 organization determined to be a community-based organization
3 pursuant to the federal FAA Reauthorization Act of 2018;

4 B. "first responder" means a law enforcement
5 officer, paid or volunteer firefighter, paid or volunteer
6 member of a duly incorporated first aid, emergency, ambulance
7 or rescue squad association or any other individual who, in the
8 course of that individual's employment, is dispatched to the
9 scene of a motor vehicle accident or other emergency situation
10 for the purpose of providing medical care or other assistance;

11 C. "land possessor" means a person who owns, rents,
12 leases or otherwise is in lawful possession of real property,
13 or any agent with legal authorization to act on that person's
14 behalf;

15 D. "law enforcement agency" means any state,
16 tribal, county or municipal law enforcement agency in the
17 state;

18 E. "operate" means to fly, control, direct or
19 program the flight of an unmanned aircraft system;

20 F. "unmanned aircraft" means a small aircraft used
21 for commercial use as defined by the federal aviation
22 administration, including an aerial vehicle weighing less than
23 fifty-five pounds, that is operated without the possibility of
24 direct human intervention from within or on the aircraft; and

25 G. "unmanned aircraft system" means an unmanned

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1 aircraft and any associated elements, including communication
2 links and the components that control the unmanned aircraft,
3 that are required for the pilot in command to operate safely
4 and efficiently in the national airspace system.

5 SECTION 3. [NEW MATERIAL] AERIAL TRESPASS BY AN UNMANNED
6 AIRCRAFT SYSTEM--LIABILITY--PENALTIES.--

7 A. A person shall be civilly liable for aerial
8 trespass by an unmanned aircraft system if the person
9 intentionally and without the consent of the land possessor
10 operates an unmanned aircraft system in the airspace over the
11 land possessor's real property and causes substantial
12 interference with the use and enjoyment of the property.

13 B. Factors that may be considered in determining
14 whether the operation of an unmanned aircraft system caused
15 substantial interference with the use and enjoyment of the
16 property as provided in Subsection A of this section include:

17 (1) the nature of the use and enjoyment of the
18 property;

19 (2) the operator's purpose in operating the
20 unmanned aircraft system over the property;

21 (3) the altitude of the unmanned aircraft
22 system over the property;

23 (4) the amount of time the unmanned aircraft
24 system was operated over the property;

25 (5) the frequency with which the unmanned

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1 aircraft system operated over the property during the relevant
2 time periods;

3 (6) the type of unmanned aircraft system and
4 the nature of the unmanned aircraft system's operation over the
5 property;

6 (7) whether the operation of the unmanned
7 aircraft system over the property directly caused physical or
8 emotional injury to persons or damage to real or personal
9 property on the property;

10 (8) whether the operation of the unmanned
11 aircraft system over the property directly caused economic
12 damage to the land possessor;

13 (9) the time of day the unmanned aircraft
14 system was operated over the property;

15 (10) whether an individual on the property saw
16 or heard the unmanned aircraft system while the unmanned
17 aircraft system was over the property;

18 (11) whether and the extent to which the
19 operation of the unmanned aircraft system exceeded any consent
20 given by the land possessor;

21 (12) regardless of the operator's purpose in
22 operating an unmanned aircraft system, whether the unmanned
23 aircraft system harassed persons, livestock or wildlife on the
24 property; and

25 (13) any other factor relevant to the

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1 determination of substantial interference with the use and
2 enjoyment of land.

3 C. Any claim for aerial trespass by an unmanned
4 aircraft system shall be brought pursuant to this section.

5 D. A person shall be barred from bringing a claim
6 pursuant to Subsection A of this section if the unmanned
7 aircraft system:

8 (1) was lawfully in the flight path for
9 landing at an airport, airfield or runway;

10 (2) was under the lawful operation of a:

11 (a) law enforcement agency pursuant to a
12 valid warrant or court order;

13 (b) law enforcement agency if the law
14 enforcement agency possessed reasonable suspicion that, under
15 the specific circumstances, immediate action was necessary to:

16 1) prevent imminent danger to life or serious damage to
17 property; 2) forestall the imminent escape of a suspect or the
18 destruction of evidence; or 3) facilitate in the search for a
19 missing person;

20 (c) law enforcement agency for the
21 purpose of reconstructing a specific crime scene or accident
22 scene, or similar physical assessment, related to a specific
23 criminal investigation and otherwise in compliance with
24 federal, state and local law; or

25 (d) public agency in accordance with any

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1 applicable law;

2 (3) was under the lawful operation of a
3 business registered in this state or a land surveyor; provided
4 that the:

5 (a) operator was licensed or otherwise
6 approved to operate the unmanned aircraft system by the federal
7 aviation administration;

8 (b) unmanned aircraft system was
9 operated within the scope of the lawful activities of the
10 business or surveyor; and

11 (c) operation of the unmanned aircraft
12 system did not unreasonably interfere with the existing use of
13 the real property;

14 (4) was operated for purposes protected by the
15 first amendment of the United States constitution; or

16 (5) was operated for purposes of protecting
17 public safety by authorized public safety personnel in
18 emergency or exigent situations.

19 E. A person who violates this section is guilty of
20 a misdemeanor and shall be sentenced pursuant to the provisions
21 of Section 31-19-1 NMSA 1978.

22 **SECTION 4. [NEW MATERIAL] TRESPASS TO LAND OR WATER BY**
23 **AN UNMANNED AIRCRAFT SYSTEM--LIABILITY.--**

24 A. Except as otherwise provided in Subsection B of
25 this section, a person shall be civilly liable for trespass to

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1 land or water by an unmanned aircraft system if the person
2 intentionally:

3 (1) lands an unmanned aircraft system on a
4 land possessor's real property; or

5 (2) causes an unmanned aircraft system to come
6 into physical contact with the buildings, structures, trees,
7 shrubs or other natural features on a land possessor's real
8 property.

9 B. A person is not liable under Subsection A of
10 this section if the:

11 (1) unmanned aircraft system operator is
12 forced to land the unmanned aircraft system because of
13 unexpected circumstances that reasonably justify the landing;
14 or

15 (2) unmanned aircraft system touches down due
16 to a malfunction or because of weather or any other factor
17 beyond the operator's control.

18 C. An operator or owner asserting the privileges
19 provided in Subsection B of this section is liable for any
20 damage caused by the operation of the unmanned aircraft system.

21 D. This section shall not apply to a person with a
22 right of trespass, including engineering or surveying entities
23 for the purposes of establishing property corners and other
24 mapping or design-related functions.

25 SECTION 5. [NEW MATERIAL] LAND POSSESSORS--DUTIES--

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1 LIABILITIES.--

2 A. A land possessor shall act with reasonable care
3 in relation to known unmanned aircraft systems operating in the
4 airspace over the land possessor's property.

5 B. A land possessor who is not otherwise authorized
6 by federal or state law and who initiates any active
7 countermeasures in response to the operation of unmanned
8 aircraft systems over the land possessor's land shall be liable
9 for damages caused to the unmanned aircraft system, operator or
10 other property by the countermeasures taken.

11 C. A land possessor does not owe a duty to the
12 unmanned aircraft system operator to ensure that the airspace
13 above the land possessor's property is free from obstructions.

14 SECTION 6. [NEW MATERIAL] RECKLESS ENDANGERMENT.--

15 A. A person who operates an unmanned aircraft
16 system carelessly and heedlessly in willful or wanton disregard
17 of the rights or safety of others and without due caution and
18 circumspection and at a speed or in a manner so as to endanger
19 or be likely to endanger any person or property is guilty of
20 reckless endangerment.

21 B. A person who commits reckless endangerment is
22 guilty of a misdemeanor and shall be sentenced pursuant to the
23 provisions of Section 31-19-1 NMSA 1978.

24 SECTION 7. [NEW MATERIAL] STATE-OWNED LAND--TAKEOFF AND
25 LANDING OR RECOVERY OF AN UNMANNED AIRCRAFT SYSTEM--UNLAWFUL

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1 OPERATION OF AN UNMANNED AIRCRAFT SYSTEM AT A CORRECTIONAL
2 FACILITY.--

3 A. No unmanned aircraft system may be launched or
4 recovered from any state-owned land without permission from the
5 entity responsible for managing that land.

6 B. A unit of local government may adopt an
7 ordinance to regulate the use of the local government's
8 property for the launch or recovery of unmanned aircraft
9 systems.

10 C. Unlawful operation of an unmanned aircraft
11 system at a correctional facility consists of knowingly or
12 intentionally creating or maintaining a condition that
13 endangers the safety or security of a correctional facility by
14 operating an unmanned aircraft system on the premises of or in
15 close proximity to that facility without a license or
16 permission from the facility. A person who commits unlawful
17 operation of an unmanned aircraft system at a correctional
18 facility is guilty of a fourth degree felony and shall be
19 sentenced pursuant to the provisions of Section 31-18-15 NMSA
20 1978.

21 D. All state and local law enforcement agencies are
22 authorized to provide training, oversight and guidance for
23 search and rescue missions using unmanned aircraft systems
24 subject to the following:

- 25 (1) the unmanned aircraft system shall be used

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1 only for search and rescue operations or training;

2 (2) the law enforcement agency may coordinate
3 with an outside agency that is licensed, registered with the
4 federal aviation administration and certified for the purposes
5 of search and rescue or reconnaissance necessary to effect the
6 recovery of an individual; and

7 (3) the law enforcement agency shall contact
8 the state parks division of the energy, minerals and natural
9 resources department or the federal bureau of land management
10 to request permission for and supervision of the use of an
11 unmanned aircraft system on land managed by either the state
12 parks division of the energy, minerals and natural resources
13 department or the federal bureau of land management.

14 SECTION 8. [NEW MATERIAL] UNMANNED AIRCRAFT SYSTEMS--
15 PROTECTION OF WILDLIFE--CRIMINAL LIABILITY.--

16 A. It shall be unlawful to operate an unmanned
17 aircraft system in the following ways:

18 (1) to interfere in the acts of a person who
19 is lawfully fishing, hunting or trapping; and

20 (2) to harass, track, locate, scout or detect
21 wildlife or fish as an aid in the hunting, taking or trapping
22 of wildlife or in fishing.

23 B. A person who knowingly and willfully violates
24 the provisions of this section is guilty of a fourth degree
25 felony and shall be sentenced pursuant to the provisions of

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1 Section 31-18-15 NMSA 1978.

2 SECTION 9. [NEW MATERIAL] UNMANNED AIRCRAFT SYSTEMS--
3 UNLAWFUL INTERFERENCE WITH A FIRST RESPONDER--IMMUNITY.--

4 A. A first responder shall receive absolute
5 immunity for any damage caused to an unmanned aircraft system
6 that created or caused an interference with the provision of
7 emergency services by the first responder.

8 B. Unlawful interference with a first responder by
9 unmanned aircraft system consists of knowingly or intentionally
10 operating an unmanned aircraft system in a manner that
11 interferes with a first responder who is actively engaged in
12 the provision of emergency services or actively engaged in air,
13 water, vehicular, ground or specialized transport. A person
14 who commits unlawful interference with a first responder by
15 unmanned aircraft system is guilty of a fourth degree felony
16 and shall be sentenced pursuant to the provisions of Section
17 31-18-15 NMSA 1978.

18 SECTION 10. [NEW MATERIAL] COMMUNITY-BASED
19 ORGANIZATION--EXEMPT FROM ACT.--The provisions of the Unmanned
20 Aircraft Systems Use and Privacy Safeguarding Act shall not
21 apply to a community-based organization.

22 SECTION 11. TEMPORARY PROVISION--DEPARTMENT OF PUBLIC
23 SAFETY STUDY.--The department of public safety shall perform a
24 study to identify ways to integrate unmanned aircraft systems
25 within local and state government functions relating to

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1 firefighting, search and rescue, accident reconstruction, crime
2 scene documentation, emergency management and emergencies
3 involving significant property loss, injury or death.

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