

SENATE BILL REPORT

ESHB 1093

As Reported by Senate Committee On:
Law & Justice, March 31, 2015

Title: An act relating to unmanned aircraft.

Brief Description: Concerning unmanned aircraft.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Morris and Moeller).

Brief History: Passed House: 3/04/15, 94-3.

Committee Activity: Law & Justice: 3/23/15, 3/31/15 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pearson and Roach.

Minority Report: Do not pass.

Signed by Senators Pedersen, Ranking Minority Member; Kohl-Welles.

Minority Report: That it be referred without recommendation.

Signed by Senator Darneille.

Staff: Tim Ford (786-7423)

Background: A remotely piloted aircraft, commonly known as a drone, is an aircraft without a human pilot onboard. The flight is controlled either autonomously by computers onboard, or under the remote control of a pilot on the ground or in another vehicle. There are a wide variety of drone shapes, configurations, and missions. Applications for drones include military, law enforcement, agriculture, business, weather, recreation, and criminal or nefarious drone enterprises.

In 2012 the Federal Aviation Administration (FAA) established the Unmanned Aircraft Systems (UAS) Integration Office to provide a one-stop portal for certification of civil and public drone operations in national airspace. By the fall of 2015, Congress requires that the FAA integrate remotely piloted aircraft throughout U.S. airspace. The FAA has authorized limited drone operations for important missions in the public interest, such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, military training, and

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testing and evaluation. In February 2015, the FAA proposed regulations that would allow routine commercial use of small UAS – under 55 pounds. The FAA proposal would limit flights to daylight and visual-line-of-sight operations. It also addresses height restrictions, operator certification, optional use of a visual observer, aircraft registration and marking, and operational limits.

Model aircraft are also unmanned aircraft. FAA guidance says that model aircraft flights should be kept below 400 feet above ground level, should be flown a sufficient distance from populated areas and full scale aircraft, and are used for recreational, rather than business, purposes.

Class G Airspace. Class G airspace is a type of airspace designated by the FAA and Class G airspace is considered uncontrolled. Class G airspace generally lies between the ground surface and the base of a different overlying airspace that is controlled. Air traffic control is a service provided in controlled airspace to private, military, and commercial aircraft to prevent collisions, organize and expedite the flow of traffic, and provide information and other support for pilots. Air traffic control does not generally provide services or control for aircraft in Class G airspace but may provide advisory services.

Some states have enacted laws or regulations for drone uses. Washington State law does not regulate drone uses.

Reasonable Expectation of Privacy. Courts may determine whether an individual has a "reasonable expectation of privacy" as part of the legal analysis when deciding whether certain actions by government violate an individual's constitutional rights related to privacy, and whether certain actions by any person or entity violate common law or statutory rights to privacy.

Summary of Bill (Recommended Amendments): Operations of an unmanned aircraft (UA) in Washington State airspace while equipped with an active sensory device (ASD) are prohibited, unless the federal government provides specific authorization for such operation. Operations of UA are authorized where the UA is clearly and conspicuously labeled with the name and contact information of the aircraft's owner and operator, and the UA does not have an ASD onboard that collects personal information about any individual without the individual's consent.

Washington State airspace means all airspace within the territorial limits of this state and is designated as class G airspace by the FAA. Active sensing device means a sensing device that is acquiring personal information from its surroundings, as distinguished from a sensing device when such functionality is dormant. It does not include sensing devices that provide information directly necessary for safe navigation or piloting. Personal information includes the following:

1. any information that describes, locates, or indexes anything about a person; and
2. any image of a person when:
 - a. the person is on private property;
 - b. the landowner and tenants do not consent to the capture of images; and
 - c. capture of the image violates a reasonable expectation of privacy.

Specific federal authorization for UAs does not include operations for model aircraft. The use of UAs by a public agency is exempt from the provisions of this act.

Criminal Penalty. It is a violation where a person who operates a UA intends to capture personal information of another for an illicit purpose, including a commercial purpose, and does not obtain federal authorization or does not conspicuously label the UA and uses an ASD onboard to collect personal information without consent. Violations are a misdemeanor, in addition to any other penalty provided by law.

Civil Remedy. An individual whose reasonable expectation of privacy is violated by an unlawful operation of a UA equipped with an ASD may bring an action for damages, recovering the greater of actual or liquidated damages of \$5,000 and attorneys' fees and costs. This remedy is in addition to others and does not exclude other remedies available.

Nothing in this act is 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 UA with ASDs.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): Nothing in this act is 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 UA with ASDs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: This is a tool for citizens and law enforcement to protect privacy rights. Drones may be used for stalking and harassing neighbors or others. It makes it illegal to spy on people using a drone without their permission. The bill does not prohibit Amazon from delivering packages by drone, and it doesn't affect a farmer who wants to use a drone for their own farm.

Persons Testifying: PRO: Representative Morris, prime sponsor.

Persons Signed in to Testify But Not Testifying: No one.