

HOUSE BILL NO. 593

INTRODUCED BY J. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA UNMANNED MODEL AERIAL  
5 VEHICLE ACT; REQUIRING UNMANNED AERIAL VEHICLE SYSTEMS TO BE REGISTERED; PROHIBITING  
6 THE USE OF UNMANNED AERIAL VEHICLES TO DISTURB, HARASS, OR ANNOY; PROHIBITING THE USE  
7 OF UNMANNED AERIAL VEHICLES WITHOUT CONSENT OR A SEARCH WARRANT FOR SURVEILLANCE  
8 OR FOR RECORDING OR VIEWING IMAGES; PROVIDING EXCEPTIONS; PROVIDING PENALTIES FOR  
9 OPERATING AN UNREGISTERED UNMANNED AERIAL VEHICLE AND FOR UNAUTHORIZED OPERATION  
10 OF AN UNMANNED AERIAL VEHICLE; PROVIDING LOCAL GOVERNMENT AUTHORITY TO REGULATE  
11 UNMANNED AERIAL VEHICLES; PROVIDING RULEMAKING AUTHORITY; PROVIDING A STATUTORY  
12 APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES.  
13 ESTABLISHING REQUIREMENTS FOR THE OPERATION OF UNMANNED MODEL AERIAL VEHICLES;  
14 AUTHORIZING INCIDENT COMMANDERS TO TEMPORARILY PROHIBIT THE OPERATION OF UNMANNED  
15 MODEL AERIAL VEHICLES; PROHIBITING SURREPTITIOUS VISUAL OBSERVATION WITH AN UNMANNED  
16 MODEL AERIAL VEHICLE; PROHIBITING THE UNLAWFUL OPERATION OF AN UNMANNED MODEL AERIAL  
17 VEHICLE; PROVIDING PENALTIES; AUTHORIZING LOCAL GOVERNMENTS TO REGULATE UNMANNED  
18 MODEL AERIAL VEHICLES IN CERTAIN CASES; PROHIBITING THE INTERFERENCE WITH THE TAKING OF  
19 FISH AND GAME; AND AMENDING SECTION 87-6-215, MCA."

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21 WHEREAS, Article II, sections 10 and 11, of the Constitution of the State of Montana provide the right  
22 of individual privacy and the right to be free from unreasonable searches and seizures; and

23 ~~WHEREAS, the right of individual privacy is not limited to a right to privacy that may be enjoyed only~~  
24 ~~inside one's home behind closed curtains; and~~

25 ~~WHEREAS, the right to individual privacy extends to a right to be in a public place without being~~  
26 ~~subjected to mobile surveillance and image capture by unknown persons or entities making use of new and~~  
27 ~~developing technologies commonly referred to as unmanned aerial vehicle systems; and~~

28 ~~WHEREAS, the Federal Aviation Administration has issued a document titled "Law Enforcement~~  
29 ~~Guidance for Suspected Unauthorized UAS (Unmanned Aircraft Systems) Operators" which recognizes that state~~  
30 ~~and local governments have the authority to enact laws regarding the use of unmanned aerial vehicle systems;~~

1 and

2 ~~WHEREAS, Article II, section 3, of the Constitution of the State of Montana recognizes the inalienable~~  
3 ~~rights of the people of Montana to seek "their safety, health and happiness in all lawful ways" and the right to~~  
4 ~~enjoy "their lives and liberties".~~

5 ~~NOW, THEREFORE, the Montana Legislature resolves that there is a need to regulate and license~~  
6 ~~unmanned aerial vehicle systems and their operators where the Federal Aviation Administration has not~~  
7 ~~regulated, registered, or licensed them in order to ensure that the privacy rights, property rights, and rights of~~  
8 ~~Montanans to enjoy life are protected.~~

9 WHEREAS, PURSUANT TO SECTION 336 OF THE FAA MODERNIZATION AND REFORM ACT OF 2012, THE  
10 ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION MAY NOT PROMULGATE ANY RULE OR REGULATION  
11 REGARDING A MODEL AIRCRAFT OR AN AIRCRAFT BEING DEVELOPED AS A MODEL AIRCRAFT UNDER CERTAIN  
12 CIRCUMSTANCES; AND

13 WHEREAS, THE INABILITY OF THE FEDERAL AVIATION ADMINISTRATION TO REGULATE THE USE OF CERTAIN  
14 MODEL AIRCRAFT NECESSITATES THE REGULATION OF THESE AIRCRAFT BY THE STATE OF MONTANA TO PROTECT PUBLIC  
15 SAFETY AND PRIVACY.

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 (Refer to Introduced Bill)

19 Strike everything after the enacting clause and insert:

20

21 NEW SECTION. Section 1. Short title -- definition. (1) [Sections 1 through 6] may be cited as the  
22 "Montana Unmanned Model Aerial Vehicle Act".

23 (2) As used in [sections 1 through 6], "unmanned model aerial vehicle" means an unmanned aircraft that  
24 is:

- 25 (a) capable of sustained flight in the atmosphere;
- 26 (b) flown within visual line of sight of the person operating the aircraft; and
- 27 (c) flown for hobby or recreational purposes.

28

29 NEW SECTION. Section 2. Operation of unmanned model aerial vehicles -- duties. A person  
30 operating an unmanned model aerial vehicle shall:

- 1 (1) attach an easily identifiable label on the model aerial vehicle including the person's full legal name  
2 and current contact information;
- 3 (2) avoid interference with manned aircraft operations;
- 4 (3) remain at least 25 feet away from nonconsenting individuals and the nonconsenting individual's  
5 property;
- 6 (4) secure the express written permission of an airport before flying within 5 miles of the airport;
- 7 (5) avoid flying in adverse weather conditions, such as in high-wind conditions or when visibility is  
8 reduced;
- 9 (6) ensure the operating environment is conducive to safe operation of the unmanned model aerial  
10 vehicle;
- 11 (7) avoid operating an unmanned model aerial vehicle during the period from one-half hour after sunset  
12 to one-half hour before sunrise;
- 13 (8) comply with all applicable local laws and ordinances; and
- 14 (9) comply with any emergency proclamation temporarily prohibiting the operation of unmanned model  
15 aerial vehicles as provided in [section 3].

16

17 **NEW SECTION. Section 3. Emergency proclamation to ground unmanned model aerial vehicles.**

18 When there is a threat to life or property, including private property or publicly owned lands, an incident  
19 commander as defined in 10-3-1203 or the incident commander's designee may temporarily prohibit the operation  
20 of unmanned model aerial vehicles within 5 miles of the incident location or area.

21

22 **NEW SECTION. Section 4. Local government regulations -- unmanned model aerial vehicles.** (1)

23 For the purpose of protecting public safety and welfare, a governing body of a county, consolidated local  
24 government, or municipality may adopt an ordinance or resolution regulating the operation of unmanned model  
25 aerial vehicles over property under the control of the county, consolidated local government, or municipality.

26 (2) Before a governing body adopts an ordinance or resolution regulating the operation of unmanned  
27 model aerial vehicles pursuant to subsection (1), the governing body shall hold at least one public hearing. The  
28 notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county  
29 commission and as provided in 7-1-4127 if the governing body is a city commission or a town council.

30

1            **NEW SECTION. Section 5. Surreptitious visual observation with unmanned model aerial vehicle**

2 **prohibited.** (1) A person commits the offense of surreptitious visual observation or recordation in a place of  
3 residence with an unmanned model aerial vehicle if the person operates an unmanned model aerial vehicle and  
4 purposely or knowingly views or records a person in a place of residence in a surreptitious manner.

5            (2) A person convicted of an offense under subsection (1) shall be punished as provided in 45-5-223.

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7            **NEW SECTION. Section 6. Unlawful operation of unmanned model aerial vehicles -- forfeiture.**

8 (1) A person commits the offense of unlawful operation of an unmanned model aerial vehicle if the person  
9 purposely or knowingly operates an unmanned model aerial vehicle in violation of [section 2].

10            (2) A person convicted of an offense under subsection (1) shall be fined not less than \$25 or more than  
11 \$300. Upon a second or subsequent conviction, a person shall be fined an amount not less than \$100 or more  
12 than \$5,000.

13            (3) In addition to the fine imposed for a violation of this section, the unmanned model aerial vehicle used  
14 in violation of [section 2] may be subject to criminal forfeiture upon the person's conviction subject to the  
15 procedures set forth in Title 44, chapter 12. Whenever property is forfeited and sold pursuant to this section, the  
16 net proceeds of the sale must be distributed to the holders of security interests who have presented proper proof  
17 of their claims, if any, up to the amount of their interests in the property.

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19            **Section 7.** Section 87-6-215, MCA, is amended to read:

20            **"87-6-215. Harassment.** (1) (a) A person may not:

21            (i) intentionally interfere with the lawful taking of a wild animal or fishing by another;

22            (ii) with intent to prevent or hinder its lawful taking or its capture, disturb a wild animal or engage in an  
23 activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a  
24 wild animal; ~~or~~

25            (iii) disturb an individual engaged in the lawful taking of a wild animal or fishing with intent to prevent the  
26 taking of the animal or the capture of the fish; or

27            (iv) operate an unmanned model aerial vehicle to intentionally interfere with the lawful taking of a wild  
28 animal or fishing by another person or for any other purpose prohibited under this section.

29            (b) This subsection (1) does not:

30            (i) prohibit a landowner or lessee from taking reasonable measures to prevent imminent danger to

1 domestic livestock and equipment; or

2 (ii) prohibit or curtail normal landowner operations or lawful uses of water.

3 (2) A person convicted of a violation of this section shall be fined not more than \$500 or be imprisoned  
4 for not more than 30 days, or both. A person convicted of a second or subsequent violation shall be fined not  
5 more than \$1,000 or be imprisoned for not more than 1 year, or both.

6 (3) A court of general jurisdiction may enjoin conduct in violation of this section upon petition by a person  
7 affected or who reasonably may be affected by that conduct and upon a showing that the conduct is threatened  
8 or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under  
9 similar circumstances it will be repeated.

10 (4) As used in this section:

11 (a) "fishing" means the lawful means of fishing as described in 87-6-501;

12 (b) "taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which  
13 the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal; ~~and~~

14 (c) "unmanned model aerial vehicle" has the meaning provided in [section 1]; and

15 ~~(e)~~(d) "wild animal" means a game animal, migratory game bird, upland game bird, fur-bearing animal,  
16 predatory animal, or fish."

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18 NEW SECTION. Section 8. Statutory construction -- legislative intent. Nothing in [sections 1 through  
19 6] may be construed to supersede any existing or future rule or regulation promulgated by the Federal Aviation  
20 Administration.

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22 NEW SECTION. Section 9. Codification instruction. [Sections 1 through 6] are intended to be codified  
23 as an integral part of Title 67, and the provisions of Title 67 apply to [sections 1 through 6].  
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25 NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that matured,  
26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
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28 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are  
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
30 the part remains in effect in all valid applications that are severable from the invalid applications.  
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- END -