

1 HOUSE BILL NO. 593

2 INTRODUCED BY J. ESSMANN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA UNMANNED AERIAL VEHICLE
5 ACT; REQUIRING UNMANNED AERIAL VEHICLE SYSTEMS TO BE REGISTERED; PROHIBITING THE USE
6 OF UNMANNED AERIAL VEHICLES TO DISTURB, HARASS, OR ANNOY; PROHIBITING THE USE OF
7 UNMANNED AERIAL VEHICLES WITHOUT CONSENT OR A SEARCH WARRANT FOR SURVEILLANCE OR
8 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

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

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

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

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

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

28 NOW, THEREFORE, the Montana Legislature resolves that there is a need to regulate and license
29 unmanned aerial vehicle systems and their operators where the Federal Aviation Administration has not
30 regulated, registered, or licensed them in order to ensure that the privacy rights, property rights, and rights of

1 Montanans to enjoy life are protected.

2

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

4

5 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana
6 Unmanned Aerial Vehicle Systems Act".

7

8 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], the following definitions
9 apply:

10 (1) "Aircraft" means a contrivance or vehicle used or designed for navigation of or flight in the air.

11 (2) "Image" means any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other
12 electromagnetic waves, odor, or other conditions existing on or about real property in this state or an individual
13 located on that property.

14 (3) "Model aircraft" means an aircraft operated without direct human intervention from on or within the
15 aircraft after it is launched into flight. For purposes of [sections 1 through 10], a model aircraft is not an unmanned
16 aerial vehicle or unmanned aerial vehicle system if it:

17 (a) is flown solely for hobby or recreational purposes; and

18 (b) is not equipped with a camera or audio or video recording equipment.

19 (4) "Unmanned aerial vehicle" or "unmanned aerial vehicle system" means an aircraft and associated
20 elements, including communication links and components that control the unmanned aerial vehicle that are
21 required for the operator in command to operate safely and efficiently, that is operated without direct human
22 intervention from on or within the aircraft. The term does not include satellites or model aircraft.

23

24 NEW SECTION. **Section 3. License required for operation of unmanned aerial vehicle system.**

25 (1) Except for persons operating unmanned aerial vehicle systems for commercial purposes that are licensed or
26 regulated by the federal aviation administration, a person may not operate an unmanned aerial vehicle system
27 in this state unless the person is in possession of a valid license issued by the aeronautics division of the
28 department of transportation for the unmanned aerial vehicle system being operated.

29 (2) A person may not be issued a license authorizing the personal noncommercial use of an unmanned
30 aerial vehicle under this section unless the person:

1 (a) is at least 15 years of age; and

2 (b) has passed the knowledge test for operating an unmanned aerial vehicle system as administered
3 by the department. The test may be administered online and must include questions regarding the legal, ethical,
4 and safe operation of unmanned aerial vehicles.

5 (3) A license to operate an unmanned aerial vehicle system for personal use may not be issued to a
6 person while the person's license to operate an unmanned aerial vehicle system is suspended, revoked, or
7 canceled in any state or by any federal agency.

8 (4) The department shall develop and administer a program to license personal operators of unmanned
9 aerial vehicle systems. The program must include the following components:

10 (a) a system for classifying unmanned aerial vehicle systems based on characteristics determined by
11 the department;

12 (b) a fee structure for licenses;

13 (c) a license application process;

14 (d) technical guidance for complying with program requirements;

15 (e) criteria under which the department may suspend or revoke a license;

16 (f) criteria under which the department may waive licensure requirements for an applicant currently
17 holding a valid license to operate an unmanned aerial vehicle system issued by another state or territory of the
18 United States, the District of Columbia, or the United States;

19 (g) requirements pertaining to the collection, use, and retention of data by licensees obtained through
20 the operation of unmanned aerial vehicle systems;

21 (h) a system for providing agencies that conduct other operations within regulated airspace and any local
22 government or law enforcement agency with the identity and contact information of licensees and ownership of
23 registered unmanned aerial vehicle systems; and

24 (i) other rules the department may promulgate as necessary for the implementation of this section.

25 (5) Application for a license must be made in the manner provided by the department. Unless suspended
26 or revoked, the license is valid for a period to be established by the department but not exceeding 2 years.

27 (6) A person convicted of operating an unmanned aerial vehicle system for purposes other than as
28 permitted shall be fined an amount not to exceed \$5,000.

29

30 **NEW SECTION. Section 4. Unmanned aerial vehicle system registration.** (1) Unmanned aerial

1 vehicle systems must be registered with the department. Unmanned aerial vehicles must be marked by the
2 department sufficient to permit the identification of the owner of the unmanned aerial vehicle system and the
3 person licensed to operate the unmanned aerial vehicle system.

4 (2) The department shall provide a system for providing agencies that conduct operations within
5 regulated airspace and any local government or law enforcement agency with the identity, contact information,
6 and ownership of registered unmanned aerial vehicle systems.

7 (3) The department may promulgate rules implementing the provisions of this section.

8
9 **NEW SECTION. Section 5. Prohibitions.** (1) Except as otherwise provided in [sections 1 through 10],
10 a person, entity, or state agency may not:

11 (a) use an unmanned aerial vehicle system to do any of the following:

12 (i) conduct surveillance of:

13 (A) an individual or a dwelling owned by an individual and that dwelling's curtilage without the individual's
14 written consent; or

15 (B) a farm, dairy, ranch, or other agricultural industry without the written consent of the owner or operator
16 of the farm, dairy, ranch, or other agricultural industry;

17 (ii) purposely or knowingly photograph, record, or view images of an individual without the individual's
18 written consent; or

19 (iii) disturb, harass, annoy, or otherwise invade the privacy of any person; or

20 (b) operate an unmanned aerial vehicle during the period from one-half hour after sunset to one-half hour
21 before sunrise.

22 (2) Information obtained from the operation of an unmanned aerial vehicle in violation of [sections 1
23 through 10] may not be used in an affidavit of probable cause in an effort to obtain a search warrant unless the
24 information was obtained under the circumstances described in 46-5-109.

25 (3) A person who has been disturbed, harassed, or annoyed, who is the subject of unwarranted
26 surveillance, or whose photograph is taken or images recorded or viewed in violation of the provisions of [sections
27 1 through 10] has a civil cause of action for a minimum of \$5,000 in damages against the person or entity that
28 conducted the surveillance or that used an unmanned aerial vehicle system to violate the provisions of this
29 section.

30 (4) It is a defense to prosecution under [sections 1 through 10] that the person destroyed the image:

1 (a) as soon as the person had knowledge that the image was captured in violation of [sections 1 through
2 10]; and

3 (b) without disclosing, displaying, or distributing the image to a third party.
4

5 **NEW SECTION. Section 6. Appropriate uses of unmanned aerial vehicles.** For the purposes of
6 [sections 1 through 10], it is lawful to use a registered unmanned aerial vehicle by a licensed personal operator:

7 (1) for purposes of professional or scholarly research and development by a person acting on behalf of
8 an institution of higher education, including a person who:

9 (a) is a professor, employee, or student of the institution; or

10 (b) is under contract with or otherwise acting under the direction or on behalf of the institution of higher
11 education;

12 (2) in airspace designated as a test site or range authorized by the federal aviation administration for the
13 purpose of integrating unmanned aircraft systems into the national airspace;

14 (3) with the consent of the individual who owns or lawfully occupies the real property over which the
15 unmanned aerial vehicle is operated;

16 (4) if an image is captured by state or local law enforcement authorities or by a person who is acting
17 under the direction or on behalf of state authorities and the image is used for the purpose of preserving public
18 safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency;

19 (5) for the purpose of wildfire suppression or detection on property owned or leased by the owner of the
20 unmanned aerial vehicle system or under the command or direction of state or local authorities with jurisdiction;
21 or

22 (6) for the purpose of rescuing a person whose life or well-being is in imminent danger.
23

24 **NEW SECTION. Section 7. Unauthorized operation of unmanned aerial vehicle -- forfeiture.** (1)

25 A person commits the offense of unauthorized operation of an unmanned aerial vehicle when the person operates
26 an unmanned vehicle in violation of [sections 1 through 10].

27 (2) (a) On a first conviction, the offender shall be fined not less than \$300 or more than \$1,000 or be
28 imprisoned in the county jail for not more than 6 months, or both.

29 (b) On a second or subsequent conviction, an offender shall be fined not to exceed \$10,000 or be
30 imprisoned in the state prison for a term not to exceed 5 years, or both.

1 (3) In addition to any other penalty imposed for a violation of this section involving the unlawful use of
2 an unmanned aerial vehicle, a person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture
3 of the unmanned aerial vehicle system that was used in violation of this section following the procedure set forth
4 in Title 44, chapter 12, part 2. Whenever property is forfeited and sold pursuant to this subsection, the net
5 proceeds of the sale must be distributed to the holders of security interests who have presented proper proof of
6 their claims, if any, up to the amount of their interests in the property.

7
8 NEW SECTION. **Section 8. Local government authority.** A local government entity may regulate or
9 prohibit the operation of unmanned aerial vehicles within their jurisdiction, including designating places for use
10 of model aircraft and unmanned aerial vehicles for hobby purposes and providing notice to the public of the
11 designated areas for use.

12
13 NEW SECTION. **Section 9. State regulation.** Regulation by the state of Montana of unmanned aerial
14 vehicles and unmanned aerial vehicle systems is controlling unless specifically preempted by federal regulation.

15
16 NEW SECTION. **Section 10. Unmanned aerial vehicle system management account.** There is an
17 account in the state special revenue fund established in 17-2-102 for managing the registration and licensure
18 of noncommercial unmanned aerial vehicle systems and noncommercial operators. The money in the account
19 is statutorily appropriated, as provided in 17-7-502, to the aeronautics division of the department of transportation
20 for the purposes provided in [sections 1 through 10].

21
22 **Section 11.** Section 17-7-502, MCA, is amended to read:
23 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
24 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
25 need for a biennial legislative appropriation or budget amendment.

26 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
27 of the following provisions:

28 (a) The law containing the statutory authority must be listed in subsection (3).

29 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
30 appropriation is made as provided in this section.

1 (3) The following laws are the only laws containing statutory appropriations: 2-15-247; 2-17-105;
 2 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310;
 3 10-3-312; 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
 4 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
 5 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
 6 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-1-327; 22-3-1004; 23-4-105;
 7 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-1-105; 39-71-503;
 8 41-5-2011; 42-2-105; 44-4-1101; 44-12-206; 44-13-102; 53-1-109; 53-1-215; 53-2-208; 53-9-113; 53-24-108;
 9 53-24-206; 60-11-115; 61-3-415; section 10; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
 10 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161;
 11 85-20-1504; 85-20-1505; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

12 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 13 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 14 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 15 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 16 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 17 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 18 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 19 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 20 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 21 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 22 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the
 23 inclusion of 53-9-113 terminates June 30, 2015; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331
 24 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004 terminates June 30,
 25 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec.
 26 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017; pursuant to sec. 11(2),
 27 Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to secs. 3 and 5,
 28 Ch. 244, L. 2013, the inclusion of 22-1-327 is effective July 1, 2015, and terminates July 1, 2017; and pursuant
 29 to sec. 10, Ch. 413, L. 2013, the inclusion of 2-15-247, 39-1-105, 53-1-215, and 53-2-208 terminates June 30,
 30 2015.)"

1

2 NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
3 codified as an integral part of Title 67, chapter 3, and the provisions of Title 67, chapter 3, apply to [sections 1
4 through 10].

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6 NEW SECTION. **Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
7 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

8

9 NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12

13 NEW SECTION. **Section 15. Effective dates.** (1) Except as provided in subsection (2), [this act] is
14 effective July 1, 2015.

15 (2) [Section 3] is effective July 1, 2016.

16

- END -