

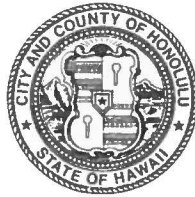


SB2347

Measure Title:	RELATING TO UNMANNED AERIAL VEHICLES.
Report Title:	Unmanned Aerial Vehicles; Restrictions on Use; Violation of Privacy
Description:	Establishes restrictions on the use of unmanned aerial vehicles. Amends the offenses of violation of privacy in the first and second degrees to specifically address the use of unmanned aerial vehicles in the commission of these offenses.
Companion:	
Package:	None
Current Referral:	PSM/CPH, JDL
Introducer(s):	L. THIELEN, CHUN OAKLAND, ENGLISH, ESPERO, GALUTERIA, KEITH-AGARAN, RIVIERE, Gabbard, Harimoto, Ihara, Kidani, Kim, Shimabukuro, Slom

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE **MT-MM**

February 11, 2016

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental, and
Military Affairs
The Honorable Rosalyn H. Baker, Chair
and Members
Committee on Commerce, Consumer Protection,
and Health
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Nishihara and Baker and Members:

SUBJECT: Senate Bill No. 2347, Relating to Unmanned Aerial Vehicles (UAVs)

I am Mark E. K. Thompson, Captain of the Specialized Services Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 2347, Relating to UAVs, but with some concerns.

UAVs are definitely becoming increasingly popular in Hawaii and there is a need to enact laws to address the privacy concerns of the public. The prohibited acts in this bill, as well as the amendments to the offense of violation of privacy in the first degree and violation of privacy in the second degree, address the privacy concerns regarding UAVs.

The HPD conducts their operations in a professional and reputable manner, respecting all privacy laws. The HPD's intent is to use UAVs in an emergency or critical situation where a person's life is in direct jeopardy. This law enforcement exception is supported in this bill.

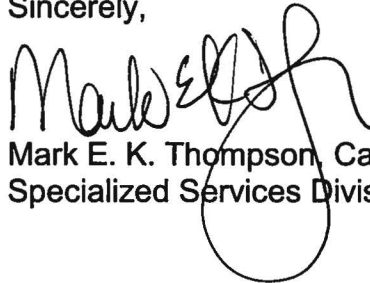
The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental, and
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and Members
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and Health
February 11, 2016
Page 2

There are possible situations that may necessitate obtaining a search warrant in order to utilize UAVs for investigative purposes. However, this is not always a feasible option and could result in the loss of evidence essential to an investigation. Therefore, the HPD opposes the section "Prohibited uses by law enforcement agencies."

The HPD urges you to support Senate Bill No. 2347, Relating to Unmanned Aerial Vehicles, after removing the "Prohibited uses by law enforcement agencies" section.

Thank you for the opportunity to testify.

Sincerely,



Mark E. K. Thompson, Captain
Specialized Services Division

APPROVED:



Louis M. Kealoha
Chief of Police

**SENATE COMMITTEE
ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

AND

**SENATE COMMITTEE
ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

February 11, 2016

Senate Bill 2347 Relating to Unmanned Aerial Vehicles

Chair Nishihara, Vice-Chair Espero, Chair Baker, Vice-Chair Kidani, members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs and Senate Committee on Commerce, Consumer Protection, and Health, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

State Farm offers the following comments about Senate Bill 2347 Relating to Unmanned Aerial Vehicles:

The Hawaii Legislature should be aware that the Federal Aviation Administration (FAA) is poised to finalize its rules on Unmanned Aerial Vehicles. The National Telecommunications and Information Administration's (NTIA) process is developing its rules which will form the basis for the FAA rules. **The FAA rules, which should be finalized sometime in 2016, are especially important, as they will likely preempt state laws addressing UAS operation and safety issues.**

In light of the information contained below, if these Committees decide to approve this legislation, State Farm recommends the following amendment:

This chapter does not apply to a business entity doing business lawfully in this state, using UAS for legitimate business purposes, and operating the UAS in a manner consistent with applicable FAA rules, licenses or exemptions.

Commercial operations of UAS, including for research and development purposes, are currently prohibited under Federal law without specific FAA approval. In order to use UAS for commercial purposes, a company needs to file a petition with and receive approval from the FAA. State Farm is the first insurance company to receive FAA approval to use Unmanned Aircraft Systems (UAS) (or Unmanned Aerial Vehicles, UAV). State Farm commented upon the NTIA efforts to establish a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency issues regarding commercial and private use of UAS, is the recipient of two grants issued pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 (Exemptions No. 11175 and No. 11188) allowing State Farm to use UAS for insurance purposes. Specifically, State Farm has been granted permission to use UAS for roof inspections, and research and development purposes, including catastrophe scene surveys. State

Farm believes the use of UAS can benefit the lives and safety of its policyholders, employees, and the general public.

In 2012, the Federal Aviation Administration Modernization and Reform Act (FMRA) was enacted, which requires the FAA to develop regulations for how UAS will operate in U.S. airspace. The law called for regulations to be developed by 2015, and in February 2015 the FAA issued a Notice of Proposed Rulemaking for the Operation and Certification of Small UAS (NPRM), which lays out the agency's proposed regulatory environment for commercial entities. The NPRM offers safety rules for small UAS (under 55 pounds), and the following are:

- Flights are restricted near airports or other restricted airspace;
- UAS can fly up to 100 miles per hour and up to 500 feet above ground level;
- Flights can occur only during daylight hours;
- Flights must be within visual line of sight only;
- Operators must obtain an unmanned operator certificate that is renewable every two years;
- Certificate testing will be widely available at local testing centers;
- A medical exam of operators will not be required; and
- Operators must conduct a pre-flight inspection of the UAS.

In addition, State Farm pointed out a number of areas where the rules can ideally be written to better accommodate UAS uses for insurance purposes. In particular, State Farm:

- Looks to allow for nighttime operations under certain circumstances;
- Also looks to allow for "outside of visual line of sight" operations under certain circumstances; and
- Seeks amendment to rules regarding operating over people, as proposed rules potentially prohibit State Farm from operating over a catastrophe scene.

The FMRA and the NPRM do not include an "express" preemption clause, but courts have clearly stated that the FAA preempts state and local laws dealing with air safety regulations. The FAA recently issued a fact sheet, however, outlining the many areas it believes it preempts state law in regards to UAS regulation. Accordingly, the final FAA rules should form the basis for how UAS are used for commercial purposes in the United States.

State Farm recognizes the importance of addressing privacy as it relates to UAS technology. UAS use cases for insurance industry purposes are an extension of practices most insurers already employ. For example, underwriting or claims inspections would be with the consent of the customer and, if facilitated by a UAS, functionally no different than a traditional human inspection. In addition, UAS use immediately following catastrophes would likely produce minimal privacy concerns, because it would likely be simultaneous with emergency responder fly overs for similar purposes.

Thank you for the opportunity to present this testimony.



MOTION PICTURE ASSOCIATION OF AMERICA, INC.
1600 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 293-1966

Memo in Opposition to Hawaii Senate Bill 2347

The Motion Picture Association of America, Inc. (MPAA) respectfully opposes Senate Bill 2347 because it is pre-empted by federal law and because it violates the First Amendment to the U.S. and Hawaii Constitutions. MPAA's member companies are the leading producers and distributors of motion pictures and other audiovisual works for all media platforms, including motion picture theaters, digital and video home entertainment, cable, satellite and broadcast television, as well as on the Internet. MPAA member company affiliates also produce news, entertainment news, and sports programming.

1. Senate Bill 2347 Conflicts with Federal Law.

Senate Bill 2347 limits the use of unmanned aerials vehicles (UAVs). However, the regulation of UAVs is within the scope and authority of the Federal Aviation Authority (FAA) which regulates the airspace throughout the United States. As such, the legislature may not usurp federal authority.

In fact, the FAA has authorized the use of UAVs for motion picture and television production, pursuant to the 2012 Federal Aviation Modernization and Reform Act, Section 333. Thus, this legislation is in conflict with federal law which allows for the use of UAVs in closed set motion picture production and filming.

MPAA urges that S.B. 2347 be amended to recognize the FAA's authorization for use of UAVs in motion picture and television production.

The Motion Picture Association of America, Inc. includes: The Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal Studios LLC; and Warner Bros. Entertainment Inc.

2. Senate Bill 2347 Includes a Definition of Personal Information That is Overbroad.

S.B. 2347 contains a very broad definition of personal information, to include a person's membership in an organization, participation in an activity or entrance into an institution or facility. This is an attempt to broaden privacy rights beyond what is considered a "reasonable expectation of privacy." And this definition would burden newsgathering and news operations in violation of the First Amendment's protection of free speech and free press. For example, someone entering a building from a public street would not be entitled to a right of privacy. And a person's entering into a building or facility may very well be newsworthy or a matter of public interest or concern. The legislature may not enact a law that would limit or restrict the ability to report on matters of public interest or concern, such as a particular person entering a particular building from a public street.

Additionally, participation in an activity, also defined as personal information in S.B. 2347, could include a protest or demonstration, which would likely be a newsworthy event or a matter of public interest or concern. The legislature may not enact a law that would restrict reporting on the participation of individuals in an activity, such as a protest or demonstration, since such a restriction would be in conflict with the First Amendment.

3. Senate Bill 2347 Includes a Confusing Standard of Privacy.

S.B. 2347 also creates a misdemeanor crime to use a UAV essentially to invade the privacy of another person. MPAA understands the legislature's desire to protect individual privacy in the face of new technology. However, the drafting of Section 2 is confusing. MPAA urges that an individual's right of privacy be recognized to extend in circumstances where an individual has "a reasonable expectation of privacy," which has been well-defined over many years by the courts.

For these reasons, MPAA opposes S.B. 2347.

February 2016

To: The Honorable Clarence K. Nishihara, Chair
The Honorable Will Espero, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Rosalyn H. Baker, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

From: Mark Sektnan, PCI
Christian Rataj, NAMIC
Steve Suchil, AIA

Re: **SB 2347 Relating to Unmanned Aerial Vehicles**
Position: Request to amend or defer

Date: Thursday, February 11, 2016
8:30 a.m., Room 229

Aloha Chairs Nishihara and Baker and Members of the Committees:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC), the Property Casualty Insurers Association of America (PCI), and the American Insurance Association (AIA) an opportunity to submit written testimony to your committee for the February 11, 2016, public hearing.

NAMIC, PCI, and AIA (hereinafter "trades") are the largest property/casualty insurance trade associations in the country, serving regional and local insurers, who represent a significant number of policyholders in the Hawaii insurance marketplace.

Unmanned aerial vehicles ("UAV", also known as "UAS" or "drones") represent a new technology with many positive public welfare and consumer services applications for the insurance industry, business community, and governmental entities. The trades appreciate the importance of regulating the lawful use of commercial and recreational drones, so as to promote public safety and responsible UAV use. Commercial operations of UAV, including operations for research and development purposes, are currently prohibited under Federal law without specific FAA approval. In order to use UAV for commercial purposes, a company needs to file a petition with and receive approval from the FAA. A number of insurance companies have received federal permission to use UAV for roof inspections, and research and development purposes, including catastrophe scene surveys.

The trades respectfully recommend that the proposed legislation be tabled until next legislative session, because pending Federal Aviation Regulations have yet to be finalized and may end up being in conflict with the proposed state legislation. Moreover, since federal drone law and regulations are evolving in numerous and overlapping arenas - Congress, Commerce Department, FAA, DHS, FTC, FCC, and NTIA, effective state legislative initiatives will require a more clear understanding of both the present and developing legal jurisdictional issues, and a better understanding of the legal relationship between state

and federal law on the regulation of UAV. Conflicting and confusing legislation and regulations at multiple levels of government will adversely impede the development of a uniform body of laws on responsible drone use.

If the State Legislature of Hawaii is unwilling to wait until federal legislation and regulations are fully vetted and implemented, the trades respectfully urge policymakers to consider the following issues pertaining to the legitimate and pro-consumer use of UAV by insurance companies when implementing UAV legislation and regulations:

- The insurance industry wants to use this technology during disasters to help them resolve claims in a fast and efficient manner that promotes public safety. UAV technology presents a new tool to disaster claims management; i.e. a tool that can safely and efficiently survey property damage to help policyholders more quickly recover after the disaster without interfering with the recovery efforts of first responders or posing a safety risk to insurance professionals and policyholders created by having to access potentially dangerous disaster areas to investigate claims. Policymakers should take steps to ensure that insurance companies helping communities recover, after a disaster, have the ability to appropriately use UAV to assist their policyholders.
- UAS technology has important insurance underwriting, and fraud prevention and prosecution capabilities. The trades respectfully urge policymakers to permit insurance companies to use UAV for insurance activities that are permitted pursuant to the insurance policy and consistent with state and federal law. Insurers are diligently committed to being efficient and cost-effective in facilitating their insurance services for the benefit of their insurance consumers. The use of UAV is beneficial to insurance consumers, because insurers will be able to conduct a more thorough assessment of a consumer's personal risk of loss exposure so that the insurer can more accurately match risk to insurance rate. Further, insurers will be able to use drones to fight insurance fraud that costs consumers (non-health insurance consumer) an estimated \$40 billion per year, which translates to \$400 and \$700 per year per family in the form of increased premiums. (FBI statistic).

The trades appreciate the social and legal importance of protecting reasonable privacy rights, and support prohibitions against improper infringement upon a consumer's reasonable expectation of privacy. In fact, the trades and several of their insurance company members participated in the National Telecommunications and Information Administration (NTIA) working group to develop best practices for privacy, accountability, and transparency issues regarding commercial and private use of UAV.

Since the insuring agreement specifically and expressly authorizes the insurer to engage in necessary underwriting and claims adjusting activities, and the consumer, pursuant to the terms of the contractual relationship, has authorized the insurer to look at and evaluate the external condition of the policyholder's home for homeowner's insurance and motor vehicle for auto insurance coverage, the trades believe that the proposed legislation should clearly state that UAV may be used to address these insuring agreement rights and responsibilities.

Consequently, the trades specifically recommend the following provision in SB 2347 be amended:

Section 1 -5 Business exceptions. Nothing in this chapter shall prohibit the use of an unmanned aerial vehicle by a business or professional licensed in this State, or by an agent, employee, or contractor

thereof, if the unmanned aerial vehicle is used only to perform reasonable tasks within the scope of practice or activities permitted under the business or professional license, including but not limited to:

Proposed amendment: Nothing in this section shall preclude a person or entity from utilizing a UAV for insurance purposes including underwriting, claims investigation, fraud investigation, or other commercial activity as provided in an insurance contract.

In closing, NAMIC, PCI, and AIA recommend that the Hawaii State Legislature wait to enact legislation until the Federal Aviation Administration (FAA) finalizes its rules, and until the National Telecommunications and Information Administration (NTIA) develops its regulatory guidelines. The FAA rules should be finalized in 2016, and since they may preempt certain provisions in state law addressing UAS operations and safety issues, it makes sense to postpone SB 2347 until next session. However, if the State Legislature feels compelled to pass legislation this session, the trades respectfully request that SB 2347 expressly allow for appropriate use of UAV for reasonable, pro-insurance consumer activities that are consistent with the terms of the insuring agreement or in furtherance of the public policy objective of studying how to better assess insurance risk of loss exposure, like the prevention and mitigation of wildfires.

Thank you for your time and consideration. Please feel free to contact us. Christian John Rataj (NAMIC) at 303-907-0587, Mark Sektnan (PCI) at 916-449-1370 and Steve Suchil (AIA) at 916-442-7617.

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: rkailianu57@gmail.com
Subject: *Submitted testimony for SB2347 on Feb 11, 2016 08:30AM*
Date: Tuesday, February 09, 2016 10:32:22 PM

SB2347

Submitted on: 2/9/2016

Testimony for PSM/CPH on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Rachel L. Kailianu	Ho`omana Pono, LLC	Oppose	Yes

Comments:

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Subject: *Submitted testimony for SB2347 on Feb 11, 2016 08:30AM*
Date: Wednesday, February 10, 2016 10:18:50 AM

SB2347

Submitted on: 2/10/2016

Testimony for PSM/CPH on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Na Lan	CAI LAC	Support	No

Comments:

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Date: Wednesday, February 10, 2016 3:48:31 PM

SB2347

Submitted on: 2/10/2016

Testimony for PSM/CPH on Feb 11, 2016 08:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Troy Abraham	Individual	Support	No

Comments:

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SB2347 – Relating to Unmanned Aerial Vehicles

- **Change:** Subsection 2 on page 2 from “At a height of less than twenty-five feet above a residential property without express permission from the property owner or tenant; or “ to read “At a height of less than ~~twenty-five~~ three hundred and fifty feet above a residential property without express permission from the property owner or tenant; or”
- Rationale: Using the metric of 10 times the height of a two story dwelling, placing the state limit for no drone flights over premises at 350 feet and below provides for a “drone transit/buffer zone” to create a transit corridor for UAS over private property
- **Add:** Under -7 civil cause of action, remedies on page 6 “(7) No property owner will attempt to interfere with a UAS flying in the transit corridor—interference defined as using a firearm, laser device, rock or other devices in an attempt to down the UAS—per existing ordinances and federal law.”
- Rationale: Several court cases on the Mainland have addressed property owners attempting to shoot drones down with firearms. Such actions are in violation of existing laws and U.S. Code reference interfering with the operation of aircraft and illegally discharging firearms in residential or city zoned areas. Clarifying this in State bills should occur to ensure drone operators and those they could be affecting by their flight fully understand penalties go both ways