



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 620, RELATING TO VIOLATION OF PRIVACY.

BEFORE THE:

SENATE COMMITTEE ON TRANSPORTATION

LATE

DATE: Wednesday, February 6, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Landon M.M. Murata, Deputy Attorney General

Chair Inouye and Members of the Committee:

The Department of the Attorney General (Department) offers the following comments.

The purpose of this bill is to address concerns about the increased risk to privacy due to unmanned aircraft systems, commonly known as “drones.” Under the current law, violation of privacy in the first degree is a class C felony and violation of privacy in the second degree is a misdemeanor. This bill seeks to increase the severity of these offenses to class B and C felonies, respectively, when these offenses are committed with the use of an unmanned aircraft system.

Section 2 of the bill proposes to amend section 711-1110.9(2), Hawaii Revised Statutes (HRS), to provide that “violation of privacy in the first degree shall be a class B felony if an unmanned aircraft system is used to commit the offense.” Section 3 of the bill proposes to amend section 711-1111(2), HRS, to provide that “violation of privacy in the second degree shall be a class C felony if an unmanned aircraft system is used to commit the offense.” These amendments, however, would not result in an increase in the severity of these privacy offenses because the conduct prohibited by each of these statutes, i.e. installing a device or disclosing an image does not involve the use of an unmanned aircraft system.

The Department suggests specific subsections relating to the use of unmanned aircraft systems should be added to sections 711-1110.9 and 711-1111. First, a new paragraph (c) should be added to subsection (1) of section 711-1110.9, as follows:

(c) The person intentionally or knowingly uses any unmanned aircraft system to observe, record, amplify, or broadcast another person in a stage of undress or sexual activity in any private place, without the consent of the person entitled to privacy therein.”

Second, a new paragraph (j) should be added to subsection (1) of section 711-1111, as follows:

(j) Uses any unmanned aircraft system to observe, record, amplify, or broadcast sounds or events occurring in any private place, other than another person in a stage of undress or sexual activity, without the consent of the person entitled to privacy therein.”

With respect to the increased severity of the offenses in connection with the use of an unmanned aircraft system, the Department suggests that this increased severity is both inconsistent as compared to other privacy violations, and inconsistent as compared to the rest of the penal code. Regarding the inconsistency with other privacy violations, the bill would make a violation of privacy using an unmanned aircraft system a higher grade of offense than installing a device to engage in the same conduct inside a person’s home. Given that installing a device in someone’s bedroom would reasonably be seen as a more intrusive and severe invasion of a person’s privacy, increasing the grade of offense for the use of an unmanned aircraft system seems disproportionate. Additionally, the increased severity would put violation of privacy in the first degree with the use of an unmanned aircraft system at the same level as more violent or heinous offenses such as assault in the first degree, sexual assault in the second degree, and robbery in the second degree. For these reasons, the Department suggests that the bill’s increase in severity is not appropriate.

If, however, the Committee decides to further pursue the increase in severity for the use of unmanned aircraft systems, the provisions in the bill related to severity of the offenses should be amended to include references to the new subsections. The

amendment to section 711-1110.9(2) on page 3, lines 16-18, should be changed to “; provided that any violation of subsection (1)(c) shall be a class B felony.” The amendment to section 711-1111 on page 5, lines 9-11, should be changed to “; provided that any violation of subsection (1)(j) shall be a class B felony.”

Finally, both sections 2 and 3 of the bill contain definitions for “unmanned aircraft system.” These definitions, while consistent with each other, appear vague and incomplete. The Department suggests that instead of adding a definition for unmanned aircraft system in both sections 711-1110.9 and 711-1111, definitions for “aircraft,” “unmanned aircraft,” and “unmanned aircraft system” should be added to section 711-1100, HRS, as follows:

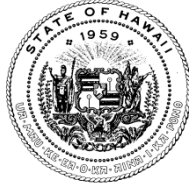
“Aircraft” means any contrivance used or designed for navigation of or flight in the air.

“Unmanned aircraft” means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

“Unmanned aircraft system” means an unmanned aircraft and its associated elements, including communication links and the components that control the unmanned aircraft, that are required to operate the unmanned aircraft.

These definitions clearly set forth the type of device the bill is attempting to address and are consistent with the definition of “aircraft” in section 261-1, HRS, and with federal law.

The Department respectfully asks that the Committee either hold this bill or make the recommended amendments.



TESTIMONY BY:

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DIRECTOR

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February 6, 2019
1:15 p.m.
State Capitol, Room 225

S.B. 620
RELATING TO VIOLATION OF PRIVACY

Senate Committee on Transportation

The Department of Transportation (DOT) **supports** S. B. 620, which defines unmanned aircraft systems and establishes penalties for unauthorized use of unmanned aircrafts.

Unmanned aircraft systems (UAS) also known as “drones” serves a useful purpose when appropriately used. However, documented incidents with unauthorized use of UAS resulted in the complete shutdown of airports for hours. The two most recent incidents being referenced is the Newark Liberty International Airport and London’s Gatwick Airport.

The disruptions to airports because of unauthorized uses of UAS inconvenience the traveling public and impacts flight operations across the State.

Thank you for the opportunity to provide testimony.



DAVID Y. IGE
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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
CHUNG I. CHANG
Office of Aerospace Development Coordinator
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON TRANSPORTATION



Wednesday, February 6, 2019
1:15 PM
State Capitol, Conference Room #225

In consideration of
SB 620
RELATING TO VIOLATION OF PRIVACY

Chair Inouye, Vice Chair Harimoto and members of the Committee. The Office of Aerospace Development provides **comments** on SB 620 that make violation of privacy a more serious offense when unmanned aircraft systems are used to commit the offense.

While it will not be proper for the Office of Aerospace Development (OAD) to comment on the level of offense, as the State's focal point to facilitate dialog and coordination among Hawaii's aerospace stakeholders to promote and diversity Hawaii's aerospace industry, we offer the following comments.

OAD is supportive of economic development opportunities in the unmanned aerial/aircraft system (UAS) and equally supportive of facilitating dialog to pursue best practices in technical, operational, and legal use of UAS at both local and national levels. Hawaii has been an active participant in policy discussions with FAA, which includes public safety regulations addressing privacy violations. Hawaii is equally involved in providing input in drone development to promote more robust solutions using the technology to control the use of "airspace" which drones operate. This will inevitably benefit public safety and law enforcement.

OAD asks the committee to consider holding the measure to allow further discussion and for federal regulations to take shape in the matters of privacy violations.

Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Transportation
Wednesday, February 6, 2019 at 1:15 p.m.

By
Vassilis L. Syrmos, Vice President for Research and Innovation
University of Hawai'i System

SB 620 – RELATING TO VIOLATION OF PRIVACY

Chair Inouye, Vice Chair Harimoto and members of the committee:

The University of Hawai'i (UH) supports the intent of this measure.

Any misuse of Unmanned Aerial Systems (UAS) due to privacy violations, unsafe acts or unauthorized usage that can harm or impede the general progress of UAS integration into Hawai'i's economic, public safety and educational futures -- must be mitigated.

The Federal Aviation Administration (FAA), UAS industry, local UAS users and UH are working collaboratively to come up with the best technical and operational solutions, while fully enabling UAS-based innovation and economic development. The FAA and U.S. Department of Justice are separately pursuing national 'best practices' to inform federal rulemaking on privacy and rights protection, while the UAS industry is working on an 'electronic signature' that would give public safety and law enforcement full details for managing UAS in critical circumstances.

While it is inappropriate for UH to comment on the level of offense for privacy violations involving UAS, as an active participant in UAS development in Hawai'i, UH agrees that robust privacy protections are necessary.

Thank you for the opportunity to testify on this measure.

SENATE COMMITTEES TRANSPORTATION

February 6, 2019

Senate Bill 620 Relating to Violation of Privacy

Chair Inouye, Vice-Chair Harimoto, and Members of the Committee on Transportation:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm offers the following comments about Senate Bill 620 Relating to Violation of Privacy:

Although State Farm does not have any strong objections to this bill, recognizing that the Federal Government is actively regulating commercial unmanned aircraft system (UAS) use, and in light of the information contained below, State Farm recommends the following amendment to the bill:

This Act does not apply to a business entity doing business lawfully in this state, using an unmanned aerial vehicle (UAV) for legitimate business purposes, and operating the UAV in a manner consistent with applicable FAA rules, licenses or exemptions.

In 2012, the Federal Aviation Administration Modernization and Reform Act (FMRA) was enacted, which required 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 (NRPM), which lays out the agency's proposed regulatory environment for commercial entities.

On June 21, 2016, the Federal Aviation Administration (FAA) released its highly-anticipated [regulations](#) for the operation and certification of small Unmanned Aerial Vehicles (UAV) (Part 107)—those weighing less than 55 pounds—for non-hobby and non-recreational purposes (commercial purposes, research and development, and educational or academic uses. Although the FMRA and Part 107 do not include an “express” preemption clause, courts have clearly stated that the FAA preempts state and local laws dealing with air safety regulations. In addition, the FAA released a Fact Sheet in late 2015 outlining its position that it preempts state and local laws for operational and safety issues. Accordingly, the final FAA rules should form the basis for how UAV are used for commercial purposes in the United States.

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 National Telecommunications and Information Administration (NTIA) efforts to establish a multi-stakeholder engagement process to develop and communicate best practices for privacy, accountability, and transparency regarding commercial and private use of UAV, and 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 UAV for insurance purposes. Specifically, State Farm has been granted permission to use UAV for roof inspections, and research and development purposes, including catastrophe scene surveys. State Farm believes the use of UAV can benefit the lives and safety of its policyholders, employees, and the general public.

State Farm recognizes the importance of addressing privacy and safety as they relate to UAV technology. UAV use 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 UAV, functionally no different than a traditional human inspection. In addition, UAV 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.

SB-620

Submitted on: 2/3/2019 7:07:33 PM

Testimony for TRS on 2/6/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Wells	Individual	Oppose	No

Comments: