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DRONE LAWS IN OTHER STATES

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You asked how many states have adopted legislation regulating drones. You also requested a copy of a recent report by the National Conference of State Legislatures (NCSL) on this issue and an analysis of the Texas drone legislation.

SUMMARY

A drone (also called an unmanned aircraft system (UAS) or unmanned aerial vehicle (UAV)) is an aircraft controlled by computers located in the aircraft or remotely by someone on the ground or in another vehicle. Although most often associated with military operations, drones have numerous law enforcement and civilian applications, including reconnaissance and land surveillance, wildlife tracking, search and rescue operations, disaster response, border patrol, and firefighting.

According to the NCSL, 13 states have enacted laws on drones, and 10 have adopted resolutions. The 13 states that have adopted laws are Florida, Hawaii, Idaho, Illinois, Maryland, Montana, Nevada, North Carolina, North Dakota, Oregon, Tennessee, Texas, and Virginia. Some common issues addressed in the legislation include defining drones and specifying who may use them and under what circumstances. The NCSL report (attached) summarizes the major provisions in the laws.

The Texas legislation identifies a wide range of lawful uses of drones, including specified law enforcement activities, mapping, fire suppression, and in connection with real estate transactions. It makes it a misdemeanor to use drones to illegally capture images or possess or distribute illegally captured images. It allows property owners and tenants to file a civil action against people who illegally capture images of them or their property using drones. It bars using illegally obtained images in court and administrative proceedings. It also establishes reporting requirements for law enforcement authorities. The legislation does not regulate the manufacture, assembly, distribution, or sale of drones.

TEXAS

Lawful Uses of Drones

A Texas bill ([HB 912](#)), which took effect September 1, 2013, enumerates several lawful uses for drones. It allows drones to be used:

1. for professional or scholarly research and development by college professors, employees, or students or someone under contract with or acting under the direction, or on behalf of, the college;
2. in airspace designated as a test site or range authorized by the Federal Aviation Administration for integrating drones into the national airspace;
3. in U.S. military operations, exercises, or missions;
4. to capture images by a satellite for mapping purposes;
5. to capture images for operations and maintenance of utility facilities and related specified activities;
6. with the consent of the owner of the property captured in the image;
7. under a valid search or arrest warrant;
8. at the scene of a hazardous material spill;
9. for fire suppression;
10. to rescue a person in imminent danger;

11. by Texas-licensed real estate brokers to capture images for marketing, sale, or financing of real property, provided no one is identifiable in the images;
12. to capture images of real property or a person on real property within 25 miles of the U.S. border;
13. from no more than eight feet above ground level in a public place, if the image was captured without using an electronic, mechanical, or other means to amplify it beyond normal human perception;
14. to capture images of public property or person on the property;
15. by the owner or operator of an oil, gas, water, or other pipeline to capture images to inspect, maintain, or repair pipelines or other related facilities, provided the image is captured without any intent to conduct surveillance on a person or real property located in the state;
16. in connection with oil pipeline safety and rig protection; or
17. in port authority surveillance security.

The bill also allows law enforcement officers, or people under contract with or acting under their direction, to use drones:

1. when in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, other than a misdemeanor or offense punishable by a fine only;
2. to document a crime scene where such an offense has been committed;
3. to investigate the scene of a fatality, motor vehicle accident causing death or serious bodily injury, or motor vehicle accident on an interstate highway;
4. in connection with a missing person's search;
5. to conduct a high-risk tactical operation that threatens human life;
6. on private property generally open to the public with the owner's consent;

7. when surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;
8. to preserve public safety, protect property, or survey damage or contamination during a lawful state of emergency; or
9. conduct routine air quality sampling and monitoring, as provided by law.

The legislation requires the Department of Public Safety to adopt rules and guidelines governing the use of drones by law enforcement authorities.

Violations

The bill makes it a class C misdemeanor to use a drone to illegally capture images with intent to conduct surveillance of the person or private property whose image is captured. It is a defense to prosecution that the person destroyed the image (1) as soon as he or she knew that it was captured illegally and (2) without disclosing, displaying, or distributing it to a third party.

The bill makes it a (1) class C misdemeanor to possess an image that the offender has illegally obtained using a drone and (2) class B misdemeanor to disclose, display, distribute, or use illegally captured images. In both cases, each image is a separate offense. For the possession offense, it is a defense that the person destroyed the image as soon as he or she knew that it was captured illegally. For the second offense, it is a defense that the person stopped disclosing, displaying, distributing, or otherwise using the image when he or she realized that it was captured illegally.

Civil Actions

The bill allows an owner or tenant of private property located in the state to file a civil suit against anyone who uses a drone illegally to capture an image of the property or the owner or tenant while on the property to:

1. enjoin a violation or imminent violation;
2. recover a civil \$5,000 penalty for all images captured in a single episode or \$10,000 for disclosing, displaying, distributing, or otherwise using images captured in a single episode; or

3. recover actual damages if the person who captured the images disclosed, displayed, or distributed them with malice.

In addition to any civil penalties authorized, the court must award court costs and reasonable attorney's fees to the prevailing party. Any civil action must be commenced within two years from the date the image was captured or initially disclosed, displayed, distributed, or otherwise used in violation of the law.

Illegal Use of Drones

Except to prove a violation of the laws governing drones, any image captured by a drone in violation of the law or incidentally to a lawful use of drones (1) may not be used as evidence in a criminal or juvenile proceeding, civil action, or administrative proceeding; (2) is not subject of disclosure, inspection, or copying; and (3) is not subject to discovery, subpoena, or other means of legal compulsion for its release.

Reporting Requirements

Between January 1 and 15 of each odd-numbered year, the bill requires each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000, that used or operated a drone in the preceding 24 months to issue a written report to the governor, the lieutenant governor, and each member of the legislature. The agency must retain the report for public viewing and post it on the law enforcement agency's publicly accessible website, if one exists.

The report must include:

1. the number of times a drone was used, organized by date, time, location, and incident type, and justification for use;
2. the number of criminal investigations aided by the use of a drone and how the drone aided each investigation;
3. the number of times a drone was used for a law enforcement operation other than a criminal investigation, dates and locations of the operations, and a description of how the drone aided each operation;

4. the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and
5. the total cost of acquiring maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.

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