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## SENATE BILL NO. 1301

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend the Code of Virginia by adding in Article 4 of Chapter 7 of Title 18.2 a section numbered 18.2-287.5 and by adding in Title 19.2 a chapter numbered 5.1, consisting of sections numbered 19.2-60.1 through 19.2-60.11, relating to regulation of unmanned aircraft; penalties.

Patrons—McEachin; Delegate: Rasoul

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That the Code of Virginia is amended by adding in Article 4 of Chapter 7 of Title 18.2 a section numbered 18.2-287.5 and by adding in Title 19.2 a chapter numbered 5.1, consisting of sections numbered 19.2-60.1 through 19.2-60.11, as follows:

**§ 18.2-287.5. Unlawful to operate unmanned aircraft system as a weapon or to deliver weapons; penalty.**

Any person who operates, manufactures, sells, or distributes an unmanned aircraft system for the purpose, in whole or in part, of using the unmanned aircraft system as a lethal or nonlethal weapon or to deliver a lethal or nonlethal weapon against a person or property is guilty of a Class 1 misdemeanor. No state or local agency in the Commonwealth shall deploy or facilitate the use of a lethal or nonlethal weaponized unmanned aircraft system.

## CHAPTER 5.1.

## PROCEDURES FOR PUBLIC UNMANNED AIRCRAFT.

**§ 19.2-60.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Administrative or inspection warrant" means an order in writing made in the name of the Commonwealth, signed by any judicial officer whose territorial jurisdiction encompasses the property or premises to be inspected or entered, and directed to a state or local official that commands the state or local official to enter and to conduct any inspection, testing, or collection of samples for testing required or authorized by state or local law or regulation.

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government, including counties, cities, towns, regional governments, and the departments thereof, and constitutional officers, except as otherwise expressly provided by law. "Agency" includes each component part of the legislative, executive, or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. "Agency" also includes any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function.

"Biometric identification system" means a system that collects unique physical and behavioral characteristics, including but not limited to biographical data, facial photographs, fingerprints, and iris scans, to identify individuals.

"Judicial officer" means a judge, magistrate, or other person authorized to issue a criminal search warrant or an inspection or administrative warrant.

"Law-enforcement officer" means the same as that term is defined in § 9.1-101.

"Person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Personal information" means all information that (i) describes, locates, or indexes anything about an individual, including but not limited to his social security number, driver's license number, agency-issued identification number, student identification number, and real or personal property holdings derived from tax returns and his education, financial transactions, medical history, ancestry, religion, political ideology, and criminal or employment record; (ii) affords a basis for inferring personal characteristics, such as fingerprints and voice prints, photographs, things done by or to such person, and the record of his presence, registration, or membership in an organization or activity or admission to an institution; or (iii) describes, locates, or indexes anything about a person, including but not limited to intellectual property, trade secrets, proprietary information, and operational information.

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59 "Public unmanned aircraft system" means an unmanned aircraft system operated by an agency or at  
60 the direction of or under the control of an agency.

61 "Sensing device" means a device capable of acquiring data or information from its surroundings,  
62 including but not limited to cameras using visible, ultraviolet, or infrared frequencies, microphones,  
63 thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency.

64 "Trade secrets" means all forms and types of financial, business, scientific, technical, economic, or  
65 engineering information, including patterns, plans, compilations, program devices, formulas, designs,  
66 prototypes, methods, techniques, processes, procedures, programs, or codes whether tangible or  
67 intangible and whether or however stored, compiled, or memorialized physically, electronically,  
68 graphically, photographically, or in writing, which the owner has taken reasonable measures to protect  
69 and which has an independent economic value.

70 "Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention  
71 from within or on the aircraft.

72 "Unmanned aircraft system" means an unmanned aircraft and associated elements, including  
73 communication links, sensing devices, and the components that control the unmanned aircraft.

74 **§ 19.2-60.2. Operation of public unmanned aircraft system; disclosure of personal information.**

75 A. Except as otherwise specifically authorized in this chapter, it shall be unlawful to operate a public  
76 unmanned aircraft system or disclose personal information about any person acquired through the  
77 operation of a public unmanned aircraft system.

78 B. All operations of a public unmanned aircraft system or disclosure of personal information about  
79 any person acquired through the operation of a public unmanned aircraft system shall be conducted in  
80 such a way as to minimize the collection and disclosure of personal information not authorized under  
81 this chapter.

82 **§ 19.2-60.3. Criminal search warrant required.**

83 A. A public unmanned aircraft system may be operated and personal information from such  
84 operation disclosed in order to collect information pursuant to a criminal search warrant issued by a  
85 judicial officer having authority to issue such warrants whose territorial jurisdiction encompasses the  
86 county or city in which a public unmanned aircraft system is to be operated or where there is probable  
87 cause to believe the offense for which the public unmanned aircraft system is sought has been  
88 committed, is being committed, or will be committed.

89 1. Each application for a criminal search warrant to permit the use of a public unmanned aircraft  
90 system and use of personal information collected from such operation shall be made in writing, upon  
91 oath or affirmation, to a judicial officer.

92 2. The law-enforcement officer shall submit an affidavit that may be filed by electronically  
93 transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480 and shall include:

94 a. The identity of the applicant and the identity of the agency conducting the investigation;

95 b. The identity of the individual and jurisdictional area for which use of the public unmanned  
96 aircraft system is being sought;

97 c. Specific and articulable facts demonstrating probable cause to believe that there is criminal  
98 activity and that the operation of the public unmanned aircraft system will uncover evidence of such  
99 activity or facts to support the finding that there is probable cause for issuance of a criminal search  
100 warrant; and

101 d. The name of the county or city where there is probable cause to believe the offense for which use  
102 of the public unmanned aircraft system is sought has been committed, is being committed, or will be  
103 committed.

104 3. If the judicial officer finds, based on the affidavit submitted, that there is probable cause to  
105 believe that a crime has been committed, is being committed, or will be committed and that there is  
106 probable cause to believe the personal information likely to be obtained from the use of the public  
107 unmanned aircraft system will be evidence of the commission of such offense, the judicial officer may  
108 issue a criminal search warrant authorizing the use of the public unmanned aircraft system. The  
109 criminal search warrant shall authorize the collection of personal information contained in or obtained  
110 from the public unmanned aircraft system but shall not authorize the use of a biometric identification  
111 system.

112 4. Criminal search warrants shall not be issued for a period longer than 48 hours. Extensions may  
113 be granted but shall be no longer than the authorizing judicial officer deems necessary to achieve the  
114 purposes for which the extension was granted and in no event for longer than 30 days.

115 5. Within 10 days of the execution of a criminal search warrant, the officer executing the warrant  
116 shall serve a copy of the warrant upon the person upon whom personal information was collected unless  
117 notice is delayed under subsection B.

118 B. A law-enforcement agency acting under this section may, when a criminal search warrant is  
119 sought, include in the application a request for an order delaying the notification required under  
120 subdivision A 5 for a period not to exceed 90 days, which the court shall grant if the court determines

that there is reason to believe that notification of the existence of the warrant may have an adverse result.

1. An adverse result, for the purposes of this section, is:
  - a. Endangering the life or physical safety of an individual;
  - b. Causing a person to flee from prosecution;
  - c. Causing the destruction of or tampering with evidence;
  - d. Causing the intimidation of potential witnesses; or
  - e. Jeopardizing an investigation or unduly delaying a trial.

2. The law-enforcement agency shall maintain a copy of its request for an extension.

3. Upon expiration of the period of delay of notification, the law-enforcement agency shall serve a copy of the warrant upon, or deliver it by registered or first-class mail to, each person upon whom personal information was collected together with notice that:

- a. States with reasonable specificity the nature of the law-enforcement inquiry; and
- b. Informs each person upon whom personal information was collected (i) that notification was delayed; (ii) what law-enforcement agency or court made the application or determination pursuant to which that delay was made; and (iii) which provision of this section allowed such delay.

C. The provisions of Chapter 5 (§ 19.2-52 et seq.) regarding search warrants shall apply to this section mutatis mutandis.

**§ 19.2-60.4. Administrative or inspection warrant required.**

A. A public unmanned aircraft system may be operated and personal information from such operation disclosed in order to collect information pursuant to an administrative or inspection warrant issued by a judicial officer having authority to issue such warrants whose territorial jurisdiction encompasses the area to be inspected or entered.

B. Each application for an administrative or inspection warrant to permit the use of a public unmanned aircraft system and use of information collected from such operation shall be made in writing, upon oath or affirmation by an agency official, to a judicial officer supported by affidavit, particularly describing the place, property, thing, or person to be inspected or tested or the information to be collected and the purpose for which the inspection, testing, or collection of information is to be made.

C. Probable cause shall be deemed to exist if either (i) reasonable legislative or administrative standards for conducting such inspection or testing or collecting such information are satisfied with respect to the particular place, property, thing, or person; or (ii) there is cause to believe that a condition, object, activity, or circumstance exists that legally justifies such inspection, testing, or collection of information.

D. The agency official shall submit an affidavit that may be filed by electronically transmitted (i) facsimile process or (ii) electronic record as defined in § 59.1-480 and shall include the identity of the applicant and the identity of the agency conducting the inspection.

E. The supporting affidavit shall contain either a statement that consent to the search and collection of information has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the safety and health laws, regulations, or standards of the warrant based on legislative or administrative standards for inspection.

F. The affidavit shall contain factual allegations sufficient to justify an independent determination by a judicial officer that the search is based on probable cause as described in subsection C and the standards are being applied to a particular area in a neutral and fair manner.

G. The judicial officer may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

H. Any administrative or inspection warrant issued shall be effective for the time specified therein, but in no event for more than 15 days unless extended or renewed by the judicial officer who signed and issued the original warrant. The administrative or inspection warrant shall be executed and shall be returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return shall list the information collected pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

I. No administrative or inspection warrant shall be executed in the absence of the owner, tenant, operator, or custodian of the premises unless the issuing judicial official specifically authorizes that such authority is reasonably necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be made forcibly unless the judicial officer has authorized a forcible entry. The issuing judicial officer may authorize a forcible entry where the facts (i) create a reasonable suspicion of immediate threat to the health or safety of persons or to the environment or (ii) establish that reasonable attempts to serve a previous administrative or inspection warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the applicant agency and a law-enforcement agency and a law-enforcement officer shall accompany the agency official during the

182 execution of the warrant.

183 J. No court of the Commonwealth shall have jurisdiction to hear a challenge to the administrative or  
184 inspection warrant prior to its return to the issuing judicial officer, except as a defense in a contempt  
185 proceeding or if the owner or custodian of the place to be inspected submits a substantial preliminary  
186 showing by affidavit and accompanied by proof that (i) a statement included by the affiant in his  
187 affidavit for the administrative or inspection search warrant was false and made knowingly and  
188 intentionally or with reckless disregard for the truth and (ii) the false statement was necessary to the  
189 finding of probable cause. The court may conduct in camera review as appropriate.

190 K. After the administrative or inspection warrant has been executed and returned to the issuing  
191 judicial officer, the validity of the warrant may be reviewed either as a defense to any Notice of  
192 Violation or by declaratory judgment action brought in a circuit court. The review shall be confined to  
193 the face of the warrant, affidavits, and supporting materials presented to the issuing judicial officer. If  
194 the owner or custodian of the place inspected submits a substantial showing by affidavit and  
195 accompanied by proof that (i) a statement included in the warrant was false and made knowingly and  
196 intentionally or with reckless disregard for the truth and (ii) the false statement was necessary to the  
197 finding of probable cause, the reviewing court shall limit its inquiry to whether there is substantial  
198 evidence in the record supporting the issuance of the warrant and may conduct a de novo determination  
199 of probable cause.

200 **§ 19.2-60.5. Exceptions to requirement for criminal search warrant or administrative or inspection**  
201 **warrant.**

202 A. Notwithstanding the prohibitions in this chapter, it shall be lawful for a law-enforcement officer  
203 or other public official to operate a public unmanned aircraft system and disclose personal information  
204 from such operation without a criminal search warrant or administrative or inspection warrant:

- 205 1. When an Amber Alert is activated pursuant to § 52-34.3;
- 206 2. When a Senior Alert is activated pursuant to § 52-34.6;
- 207 3. When a Blue Alert is activated pursuant to § 52-34.9;
- 208 4. For the purpose of a search or rescue operation where use of a public unmanned aircraft system  
209 is determined to be necessary to alleviate an immediate danger to any person; or
- 210 5. For training exercises related to the exceptions set out in this section.

211 B. The prohibitions in this chapter shall not apply to the Virginia National Guard while utilizing  
212 unmanned aircraft systems during training required to maintain readiness for its federal mission, when  
213 facilitating training for other U.S. Department of Defense units, or when such systems are utilized to  
214 support the Commonwealth for purposes other than law enforcement, including damage assessment,  
215 traffic assessment, flood stages, and wildfire assessment.

216 C. Nothing in this chapter shall prohibit use of unmanned aircraft systems solely for research and  
217 development purposes by institutions of higher education and other research organizations or  
218 institutions.

219 D. In the absence of a warrant, an operation of a public unmanned aircraft system carried out under  
220 this section for the purpose of obtaining personal information shall immediately terminate when the  
221 personal information sought is obtained or, if a warrant is applied for and denied, when the warrant is  
222 denied, whichever is earlier. In the event a warrant is applied for and denied, the personal information  
223 obtained from the operation of a public unmanned aircraft system shall be treated as having been  
224 obtained in violation of this section and an inventory of the personal information obtained shall be  
225 served on the person named in the application.

226 **§ 19.2-60.6. Collection and use of personal information; penalty.**

227 A. Whenever any personal information from a public unmanned aircraft system has been acquired,  
228 no part of such personal information and no evidence derived therefrom may be received in evidence in  
229 any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency,  
230 regulatory body, legislative committee, or other authority of the Commonwealth or a political  
231 subdivision thereof if the collection or disclosure of that personal information would be in violation of  
232 this chapter.

233 B. No personal information collected on an individual or area other than the target that justified the  
234 issuance of a warrant may be used, copied, or disclosed for any purpose. Such personal information  
235 shall be deleted as soon as possible and in no event later than 24 hours after collection.

236 C. Personal information collected on any individual or area specified in a criminal search warrant  
237 or administrative or inspection warrant shall be deleted within 30 days unless there is a reasonable  
238 belief that the personal information is evidence of criminal activity or civil liability related to the reason  
239 that allowed the use of the public unmanned public aircraft system.

240 D. The unauthorized disclosure or publication of the existence of a criminal search warrant or  
241 administrative or inspection warrant issued pursuant to this chapter, an application for such warrant,  
242 any affidavit filed in support of such warrant, or any personal information obtained as a result of such  
243 warrant is punishable as a Class 1 misdemeanor.

**§ 19.2-60.7. Compliance with Federal Aviation Administration requirements required.**

Any use of a public unmanned aircraft system shall fully comply with all Federal Aviation Administration requirements and guidelines.

**§ 19.2-60.8. Reporting requirements.**

A. By July 1 of each year, any judicial officer who has authorized the issuance of a criminal search warrant or administrative or inspection warrant or extension for a public unmanned aircraft system that expired during the preceding year or who has denied approval during that year shall report to the Chief Justice of the Virginia Supreme Court or his designee the following information:

1. The fact that a warrant or extension was applied for;
2. The kind of warrant or extension applied for;
3. The fact that the warrant or extension was granted as applied for, was modified, or was denied;
4. The period of interceptions authorized by the order and the number and duration of any extensions of the order;
5. The offense or purpose specified in the warrant and the probable cause giving rise to such warrant or extension of such warrant; and
6. The identity of the applying state agency applicant or law-enforcement officer, the agency making the application, and the judicial officer authorizing the warrant.

B. By July 1 of each year, any law-enforcement agency that applied for a criminal search warrant for the use of a public unmanned aircraft system shall report to the Superintendent of the Virginia State Police or his designee the following information:

1. The information required by subdivisions A 1 through 6 with respect to each application for a criminal search warrant or extension made during the preceding calendar year;
2. The general description of the information gathered under such search warrant or extension, including:
  - a. The approximate nature and frequency of incriminating conduct for which information was gathered;
  - b. The approximate number of persons upon whom personal information was gathered; and
  - c. The approximate nature, amount, and cost of the manpower and other resources used in the collection;
3. The number of arrests resulting from information gathered under such search warrant or extension and the offenses for which arrests were made;
4. The number of trials resulting from such information;
5. The number of motions to suppress made with respect to such information and the number of such motions granted or denied;
6. The number of convictions resulting from such information and the offenses for which the convictions were obtained and a general assessment of the importance of the information; and
7. The information required by subdivisions A 1 through 6 with respect to criminal search warrants or extensions obtained in the preceding calendar year.

C. By July 1 of each year, each state agency of the Commonwealth that applied for an administrative or inspection warrant or extension for a public unmanned aircraft system shall report to the Governor or his designee the following information:

1. The information required by subdivisions A 1 through 4 with respect to each application for an administrative or inspection warrant or extension made during the preceding calendar year;
2. The identity of the applicant and state agency making the application and the judicial officer authorizing the warrant;
3. The probable cause giving rise to the issuance of the administrative or inspection warrant in the application or extension of such warrant, including the condition, object, activity, or circumstance that legally justified such inspection, testing, or collection of information;
4. The general description of the information gathered under such warrant or extension, including:
  - a. The approximate nature and frequency of the information gathered, collected, or inspected from such place, property, thing, or person;
  - b. The approximate number of persons upon whom personal information was gathered; and
  - c. The approximate nature, amount, and cost of the manpower and other resources used in the collection or inspection; and
5. If applicable, the identity of the judicial officer authorizing forcible entry, the identity of the law-enforcement officer who assisted the agency official in executing the forcible entry order, and information justifying the issuance of the forcible entry order.

D. By December 1 of each year, the Chief Justice of the Virginia Supreme Court or his designee, the Superintendent of the Department of State Police or his designee, and the Governor or his designee shall transmit to the General Assembly a full and complete report concerning the number of applications for warrants authorizing or approving operation of a public unmanned aircraft system or

disclosure of information or data from the operation of a public unmanned aircraft system pursuant to this chapter and the number of warrants and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such report shall include a summary and analysis of all the data required to be filed with the Virginia Supreme Court, the Department of State Police, and the Governor.

**§ 19.2-60.9. Duties of localities using public unmanned aircraft systems.**

A. The governing body of any locality permitting the use of public unmanned aircraft systems shall publish publicly available written policies and procedures for the use of public unmanned aircraft systems by the law-enforcement agencies of such locality.

B. The governing body of any locality permitting the use of public unmanned aircraft systems shall, by ordinance, require the law-enforcement agency of such locality operating a public unmanned aircraft system to maintain records of each use of a public unmanned aircraft system, including the date, time, and location of use; the target of data collection; the type of data collected; the justification for the use; and the identity of the operator of the public unmanned aircraft system and the person who authorized the use.

C. The governing body of any locality permitting the use of a public unmanned aircraft system shall conduct an annual comprehensive audit on the operation of all public unmanned aircraft systems, including the law-enforcement log book, corresponding emergency telephone calls, warrants, and other documentation of the justification for use and data collected. The audit shall be publically available. The audit shall include:

1. The number of uses of a public unmanned aircraft system organized by types of incidents and types of justification for use;

2. The number of criminal investigations aided by the use and how the use was helpful to the investigation;

3. The number of uses of a public unmanned aircraft system for reasons other than criminal investigations and how the use was helpful;

4. The frequency and type of data collected for individuals or areas other than targets; and

5. The total cost of the public unmanned aircraft system.

D. The governing body of any locality permitting the use of a public unmanned aircraft system shall, upon completion of the publicly available annual audit on the use of public unmanned aircraft systems, review the use of public unmanned aircraft systems and consider both the benefits and risks to privacy before authorizing the continued operation of a public unmanned aircraft system in such locality.

**§ 19.2-60.10. Procurement of public unmanned aircraft systems by public agencies.**

No state agency or organization having jurisdiction over criminal law enforcement or regulatory violations, including but not limited to the Department of State Police, shall procure a public unmanned aircraft system pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.) without the approval of the General Assembly. No department of law enforcement as defined in § 15.2-836 of any county, city, or town or any local agency having jurisdiction over criminal law enforcement or regulatory violations shall procure a public unmanned aircraft system pursuant to the Virginia Public Procurement Act without the approval of the governing body of such locality.

**§ 19.2-60.11. Records subject to disclosure under the Freedom of Information Act.**

Excluding personally identifiable information, records required by this chapter shall be open to public disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).