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HOUSE BILL NO. 2197

Offered January 11, 2017

Prefiled January 11, 2017

A BILL to amend and reenact § 19.2-60.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-40.4 and 18.2-130.1, relating to unmanned aircraft systems; designated facility; critical infrastructure; unlawful use; penalties.

Patron—Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-60.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-40.4 and 18.2-130.1 as follows:

§ 8.01-40.4. Unmanned aircraft system; designated facility; critical infrastructure.

A. As used in this section, unless the context requires a different meaning:

"Designated facility" means the following facilities and within 500 feet of the property line and under the federally regulated height above each facility:

1. All facilities providing products or services to the U.S. Department of Defense, the U.S. Department of Homeland Security, the U.S. Department of Energy, the National Aeronautics and Space Administration, or any federal intelligence or law-enforcement agency;

2. Commercial airport facilities;

3. Commercial port and harbor facilities;

4. Data centers as defined by Standard Industrial Classification Code 737;

5. Manufacturing facilities as defined by Standard Industrial Classification Codes 20-39;

6. Petroleum and chemical storage facilities;

7. Petroleum pipelines;

8. Rail yard facilities; and

9. Spaceflight facilities.

B. Any person who without lawful authority uses an unmanned aircraft system, as defined in § 19.2-60.1, to enter into the airspace above any designated facility or critical infrastructure, as defined in § 44-146.28:2, to capture or attempt to capture an image, including the capture of a visual image, sound waves, or thermal, infrared, ultraviolet, or visible light waves or other electromagnetic waves, of such designated facility or critical infrastructure without the consent of the owner of such designated facility or critical infrastructure or other person lawfully in charge of such designated facility or critical infrastructure is liable for invasion of privacy.

C. Any person found in violation of this section shall be liable to the plaintiff for actual damages.

D. If actual damages are awarded, the court or jury may award punitive damages.

E. The court shall have the authority to order any other appropriate relief in addition to any damages awarded pursuant to this section.

§ 18.2-130.1. Use of unmanned aircraft system for capturing an image; penalties.

A. Except as authorized in § 19.2-60.1, it is unlawful for any person without lawful authority to use an unmanned aircraft system, as defined in § 19.2-60.1, to enter into the airspace above any designated facility, as defined in § 8.01-40.4, or critical infrastructure, as defined in § 44-146.28:2, to capture an image or attempt to capture an image, including the capture of a visual image, sound waves, or thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, of such designated facility or critical infrastructure without the consent of the owner of such designated facility or critical infrastructure or other person lawfully in charge of such designated facility or critical infrastructure. A violation of this section is a Class 3 misdemeanor. A second or subsequent violation of this section is a Class 2 misdemeanor. Any person who disseminates or sells an image captured in violation of this section is guilty of a Class 2 misdemeanor. A second or subsequent violation of this section wherein a person also disseminates or sells an image captured in violation of this section is a Class 1 misdemeanor.

B. The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

§ 19.2-60.1. Use of unmanned aircraft systems; public bodies; search warrant required.

A. As used in this section, unless the context requires a different meaning:

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

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

61 B. *Subject to any additional requirements or prohibitions provided by this section, any person*
62 *authorized by federal law to operate an unmanned aircraft system may operate such system in the*
63 *Commonwealth for any lawful purpose, provided that such system is operated in a manner consistent*
64 *with federal law.*

65 No state or local government department, agency, or instrumentality having jurisdiction over criminal
66 law enforcement or regulatory violations, including but not limited to the Department of State Police,
67 and no department of law enforcement as defined in § 15.2-836 of any county, city, or town shall utilize
68 an unmanned aircraft system except during the execution of a search warrant issued pursuant to this
69 chapter or an administrative or inspection warrant issued pursuant to law.

70 C. Notwithstanding the prohibition in this section, an unmanned aircraft system may be deployed
71 without a warrant (i) when an Amber Alert is activated pursuant to § 52-34.3, (ii) when a Senior Alert is
72 activated pursuant to § 52-34.6, (iii) when a Blue Alert is activated pursuant to § 52-34.9, (iv) where
73 use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to
74 any person, (v) for training exercises related to such uses, or (vi) if a person with legal authority
75 consents to the warrantless search.

76 D. The warrant requirements of this section shall not apply when such systems are utilized to support
77 the Commonwealth for purposes other than law enforcement, including damage assessment, traffic
78 assessment, flood stage assessment, and wildfire assessment. Nothing herein shall prohibit use of
79 unmanned aircraft systems for private, commercial, or recreational use or solely for research and
80 development purposes by institutions of higher education and other research organizations or institutions.

81 E. Evidence obtained through the utilization of an unmanned aircraft system in violation of this
82 section is not admissible in any criminal or civil proceeding.

83 F. In no case may a weaponized unmanned aircraft system be deployed in the Commonwealth or its
84 use facilitated in the Commonwealth by a state or local government department, agency, or
85 instrumentality or department of law enforcement in the Commonwealth except in operations at the
86 Space Port and Naval/Aegis facilities at Wallops Island.

87 G. Nothing herein shall apply to the Armed Forces of the United States or the Virginia National
88 Guard while utilizing unmanned aircraft systems during training required to maintain readiness for its
89 federal mission or when facilitating training for other U.S. Department of Defense units.

90 **2. The Virginia Department of Aviation shall prepare a plan and budget for developing Sectional**
91 **Aeronautical Charts compliant with this act and the related regulations of the Federal Aviation**
92 **Administration and present such a plan and budget to the Governor by October 1, 2017.**