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FOR DISCUSSION ONLY

# TORT LAW RELATING TO DRONES ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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February 19, 2019

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# TORT LAW RELATING TO DRONES ACT

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1 **TORT LAW RELATING TO DRONES ACT**

2 **SECTION 1: SHORT TITLE.** This [Act] may be cited as the [Uniform] Tort Law  
3 Relating to Drones Act.

4 **SECTION 2: DEFINITIONS.** In this [Act],

5 (1) “Person” means an individual, firm, partnership, corporation, company, association,  
6 joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar  
7 representative of any of them. "Person" in this Act refers to the operator of the  
unmanned aircraft or Pilot in Command (PIC).

8 (2) “Unmanned aircraft” means an aircraft operated without the possibility of direct  
9 human intervention from within or on the aircraft. For the purposes of this [Act], this term is  
10 synonymous with the term “drone” as used in the title of this [Act].

11 **SECTION 3. SCOPE.** This [Act] applies to unmanned aircraft operations and the acts  
12 of those who operate and are affected by such operations.

13 **SECTION 4. UNMANNED AIRCRAFT AND STATE TORT LAW.**

14 (a) Except as otherwise provided for in this [Act], the common law and statutory tort law  
15 [of this state] shall apply to a person who operates unmanned aircraft within [this state].

16 (b) An unmanned aircraft can be an instrumentality by which a tort can be committed  
17 under the law [of this state].

18 (c) A person who operates unmanned aircraft may assert a common law or statutory  
19 privilege, defense or immunity otherwise available in response to a tort claim relating to that  
20 person’s operation of an unmanned aircraft.

21 (d) In an action brought under any of the provisions of this [Act], civil damages and  
22 remedies shall be available as provided for actions brought under tort law in [this state].

1           **SECTION 5: AIRSPACE INTRUSIONS.**

2           (a) An aerial trespass occurs when a person intentionally and without consent of the  
3 landowner operates an unmanned aircraft in the airspace over the landowner’s property and by so  
4 doing causes substantial interference with the use and enjoyment of the property.

what is substantial intererence defined as?

5           (b) The determination of whether an unmanned aircraft’s operation over property has  
6 caused substantial interference with the use and enjoyment of property shall be based upon a  
7 review of the totality of the circumstances, including:

8                   (1) The amount of time the unmanned aircraft was operated over the landowner’s  
9 property;

10                   (2) The altitude at which the unmanned aircraft was operating;

11                   (3) The number of times unmanned aircraft have been operated over the property;

12                   (4) Whether the unmanned aircraft recorded or captured audio, video or  
13 photographs while in operation over the property; *This is a drone's purpose. Did you mean capturing of audio,  
video, or photographs of the offended landowner's property rather than the target property?*

14                   (5) Whether the landowner has regularly allowed operation of unmanned aircraft  
15 over the property;

16                   (6) Whether the operation of the unmanned aircraft caused physical damage to  
17 persons or property;

18                   (7) Whether the operation of the unmanned aircraft caused economic damage;

19                   (8) The time of day the unmanned aircraft was operated over the landowner’s  
20 property;

21                   (9) Whether an individual on the land saw or heard the unmanned aircraft while it  
22 was over the property; and,

23                   (10) The operator’s purpose in operating the unmanned aircraft over the property.

1 (c) Repeated or continual operation of an unmanned aircraft over a landowner's property  
2 shall not give rise to prescriptive rights in the airspace.

3 **SECTION 6: INTRUSIONS ON LAND.**

4 (a) Except as provided in subsection (b), a person who, without permission, intentionally  
5 lands an unmanned aircraft on the land of another, or who intentionally causes an unmanned  
6 aircraft to come into physical contact with a structure, plant life, or individual on the land of  
7 another, commits a trespass to land. *How is "intentionally" determined via this Act?*

8 (b) A trespass to land does not occur under subsection (a) when:

9 (1) the unmanned aircraft operator is forced to land the unmanned aircraft because  
10 of unexpected circumstances that reasonably justify such a landing; or,

11 (2) the unmanned aircraft malfunctions or otherwise touches down upon the  
12 surface of the land because of weather or other factors beyond the operator's control. *What are examples of  
13 other factors beyond an operator's control?*

14 (c) A person asserting the privileges provided in subsection (b) is liable for any damage  
15 caused by the unmanned aircraft's operation.

16 (d) Regardless of how an unmanned aircraft came to rest upon the property of another,  
17 the owner or operator of the unmanned aircraft has a right to recover the unmanned aircraft upon  
18 a request to the owner of such property. A landowner shall not unreasonably refuse a request to  
19 return the unmanned aircraft or to permit the unmanned aircraft's operator to recover the  
20 unmanned aircraft from the property.

21 **SECTION 7: LANDOWNER DUTIES AND RESPONSIBILITIES.**

22 (a) A landowner shall act with reasonable care in relation to known unmanned aircraft  
23 operating in the navigable airspace over the landowner's property.

(b) A landowner shall not take any action intended to interfere with the flight of

1 unmanned aircraft over the landowner's property. Please list examples of actions (verbal  
interference?, threats?, physical actions?, etc.)

2 (c) A landowner owes no duty to ensure that the airspace above the landowner's property  
3 is free from natural or artificial obstructions.

4 **SECTION 8: UNMANNED AIRCRAFT AND VIOLATIONS OF PRIVACY.**

5 (a) Privacy related civil actions may be based upon the operation of an unmanned  
6 aircraft.

7 (b) A determination of whether an unmanned aircraft's operation over property was used  
8 to violate a privacy-related right shall be based upon a review of the totality of the  
9 circumstances, including:

10 (1) Whether by hovering or repeated flights the unmanned aircraft was likely to  
11 have provided the operator with the opportunity to use the unmanned aircraft to view, listen to,  
12 record or capture by camera, microphone or other device, individuals who were present at that  
13 place and time; and, "a likelihood of opportunity" is not a violation of privacy.

14 (2) Whether the operator made statements or took other overt actions indicating a  
15 desire to use an unmanned aircraft to infringe upon rights of privacy recognized in this state. "desire" is not a  
violation of  
privacy

16 **SECTION 9. NEGLIGENCE OPERATION OF AN UNMANNED AIRCRAFT.**

17 (a) An operator acts negligently if the operator does not exercise reasonable care under all  
18 of the circumstances.

19 (b) The standard of care against which an operator of an unmanned aircraft shall be  
20 judged is the standard of care of a similarly situated operator of an unmanned aircraft, including  
21 whether the operator is a commercial or hobbyist operator and whether the operator is required  
22 by the Federal Aviation Administration or other authority to hold a license for the operation of  
23 the unmanned aircraft.



1           **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
2 applying and construing this [Uniform Act], consideration must be given to the need to promote  
3 uniformity of the law with respect to its subject matter among the states that enact it.

4           **SECTION 11. SAVINGS CLAUSE.** This [Act] does not affect the validity or effect of  
5 a notarial act performed before [the effective date of this [Act]].

6           **[SECTION 12. SEVERABILITY.** If any provision of this [Act] or its application to  
7 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
8 applications of this [Act] which can be given effect without the invalid provision or application,  
9 and to this end the provisions of this [Act] are severable.]

10 ***Legislative Note:*** Include this section only if this state lacks a general severability statute or a  
11 decision by the highest court of this state stating a general rule of severability.

12

13           **SECTION 13. EFFECTIVE DATE.** This [Act] takes effect . . . .