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FOR DISCUSSION ONLY

# UNIFORM TORT LAW RELATING TO DRONES ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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May 16, 2019 Drafting Committee Conference Call

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ON UNIFORM STATE LAWS

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May 13, 2019

## UNIFORM TORT LAW RELATING TO DRONES ACT

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1 **UNIFORM TORT LAW RELATING TO DRONES ACT**

2 **PREFATORY NOTE**

3 The development and adoption of new technologies often pose challenges to law, culture  
4 and society. These challenges are likely to be exacerbated where those technological  
5 developments implicate the jurisdiction and authority of multiple levels and branches of  
6 government. Unmanned aircraft, commonly referred to as “drones,” are one such technology.  
7 The Federal Aviation Administration (FAA) predicts that by 2022 there will be between 1.96  
8 million and 3.17 million small unmanned aircraft operating in the national airspace.<sup>1</sup> With the  
9 United States Congress and the FAA asserting jurisdiction over many aspects of unmanned  
10 aircraft operations, and states and local governments asserting jurisdiction over others, a  
11 patchwork quilt of regulatory and legal requirements is developing. In an area involving the need  
12 to integrate unmanned aircraft into an already heavily regulated national airspace system, a  
13 regulatory system that results in significant variance in requirements and controls across the  
14 country promises to inhibit the appropriate and beneficial development of unmanned aircraft  
15 systems for the variety of uses to which such technologies are suited.

16 The Uniform Tort Law Relating to Drones Act provides a uniform state-level response to  
17 the development and utilization of unmanned aircraft in a variety of circumstances within the  
18 context of federal control over aviation as well as the importance of the advances promised by  
19 unmanned aircraft use. The Act is premised on the idea that not all technological developments  
20 require the development of technology-specific legislative or even significant changes to  
21 common law doctrines. In other words, just because something is new does not mean that  
22 existing law cannot apply to it. Rather than treating all aspects of unmanned aircraft operations  
23 as “new” and thus requiring specific changes to existing tort law, the Uniform Tort Law Relating  
24 to Drones Act first focuses on those aspects of unmanned aircraft that allow legal analysis of  
25 their use under existing law. For example, unmanned aircraft tend to fly lower than manned  
26 aircraft; they are likely to capture images or other data as an aspect of their operation; and there  
27 is a perceived element of anonymity to their operation (in other words, it is not always easy to  
28 identify who is operating a particular unmanned aircraft).<sup>2</sup> Where existing law is sufficient to  
29 address the challenges unmanned aircraft are likely to pose to individuals and society, the Act  
30 makes clear that existing rules apply to unmanned aircraft operations. However, where there is  
31 uncertainty as to the law’s ability to address the salient aspects of unmanned aircraft, the Act  
32 seeks to clarify the law’s application and effect.

33 That the federal government has exclusive authority over aircraft operations in the  
34 national air space, as well as other attendant operational concerns, is well settled law. The  
35 Federal Aviation Administration is the primary regulatory agency that addresses aviation in the  
36 United States, but it does so primarily in relation to the operational aspects of flight, as well as  
37 safety, crew and pilot training, and related matters. States retain authority in a number of areas  
38 that do not directly regulate drone flight operations but may still have an effect on aircraft and  
39 their operations, including areas such as zoning of airports and helipads, privacy law, and

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<sup>1</sup> FAA Aerospace Forecast: Fiscal Years 2018-2038, p. 41 (March 2018).

<sup>2</sup> See, Jack Balkin, *The Path of Robotics Law*, 6 *Ca. L. Rev. Circuit* 45, 46 (2015).

1 product liability law.<sup>3</sup> Preemption may arise in relation to these areas where state or local laws or  
2 regulations directly conflict with existing federal aviation controls.

3 The application of state tort law, however, is not wholly preempted in relation to  
4 airplanes and certain characteristics of drones raise more issues than others in relation to specific  
5 areas of tort law. Three aspects of drones enable human activity in ways that are qualitatively  
6 different from existing aircraft technologies such that the activity brings to the foreground new  
7 tensions between people and drones. First, drones can fly lower with less noise and disruption on  
8 the ground than existing aircraft; second, drones can remain aloft in a stationary position in ways  
9 not commonly problematic with existing aircraft; and, third, drones regularly use cameras and  
10 other sensors to live stream the view from the drone to the operator, to record what they see, hear  
11 and sense, or to record additional data as they fly. The combination of these capabilities raises  
12 questions in relation to specific areas of tort law.

13 The two most contentious areas of tort law relating to drones are trespass to land and  
14 privacy. The Act provides clarity in each of these areas while also making certain that less  
15 contentious tort-related questions are also addressed. Specifically, the Tort Law Relating to  
16 Drones Act provides for efficient determination of rights and liabilities in relation to the  
17 operation of drones:

- 18 • It clarifies that the state’s tort law applies to those who use or are responsible for  
19 drone operations to the extent not otherwise provided in the Act;
- 20 • It clearly adopts the “aerial trespass” doctrine in relation to drones in the airspace  
21 above private land, protecting land possessor interests from intrusive drone  
22 incursions while not inhibiting the ability of drones to operate in drone-navigable  
23 airspace;
- 24 • It clarifies that intentional drone intrusions on land are trespasses to land;
- 25 • It clarifies the application of land possessor duties to drones operating above or  
26 having crashed or landed on the land possessor’s property;
- 27 • Recognizing the variety of statutes and case law on privacy among the states, it  
28 applies existing state tort law privacy protections to drone operations; and,
- 29 • It clarifies the application of negligence doctrines to drone operations.

30 Because the frequency of drone operations is likely to continue to increase, it is useful to  
31 provide answers to questions of drone owner and operator liability in the clearest way possible.  
32 The Tort Law Relating to Drones Act does this through the careful consideration of the ways in  
33 which drone operations are important to the application and development of state tort law.

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<sup>3</sup> See, Troy Rule, Drone Zoning, 95 N.C. L. REV. 133 (2016); Robert Heverly, The State of Drones: State Authority to Regulate Drones, 8 Alb. Govt. L. Rev. 29 (2015) FAA Office of the Chief Counsel, State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet (2015).

1 **UNIFORM 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 **Comment**

5  
6 The title of the act uses the commonly used word “drone” to refer to the technologies that  
7 are defined and referred to throughout the act as “unmanned aircraft.” *See*, §2(2), *supra*. This  
8 choice reflects the position that while it is important to retain the federal terminology for the  
9 operative provisions of the act, it is also important to include reference to the lay terminology for  
10 unmanned aircraft. As an example, while the word “drone” does not appear in the relevant  
11 Federal Aviation Administration (FAA) regulations applicable to small Unmanned Aircraft  
12 Systems, 14 C.F.R. Part 107, it does appear on the FAA’s web page that describes those  
13 regulations. [https://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=22615](https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=22615). The term  
14 “drone” appears three times in the FAA Reauthorization Act of 2018 (Public Law 115-254  
15 (2018), §§351, 360 & 379), but that same act does not define the term “drone” nor is that term  
16 otherwise defined in federal statutes in relation to unmanned aircraft. States have used both terms  
17 in legislation, *see*, Va. St. § 19.2-60.1 (Use of unmanned aircraft systems by public bodies;  
18 search warrant required); S.D. St. 22-21-1 (Trespassing to eavesdrop--Installation or use of  
19 unauthorized eavesdropping device—Drones), and some states have used both in the same  
20 legislation. *See*, Fl. St. § 330.41 (Unmanned Aircraft Systems Act) (§ 330.41(c): “‘Unmanned  
21 aircraft system’ means a drone and its associated elements . . .”).  
22

23 **SECTION 2. DEFINITIONS.** In this [act],

24 (1) “Land Possessor” means a person who owns, rents, leases or otherwise is in  
25 possession of real property.

26 (2) “Person” means an individual, firm, partnership, corporation, company, association,  
27 joint-stock association, or governmental entity. The term includes a trustee, receiver, assignee, or  
28 similar representative of any of them.(3) “State” means...[Insert ULC definition of “State”]

29 (3) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
30 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of  
31 the United States.

32 (4) “Tort” means a civil wrong, other than breach of contract, for which a claim may be  
33 made and a remedy obtained in the form of damages and, under appropriate circumstances,

1 injunctive relief.

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

5 **Comment**

6 “Land Possessor” is adapted from the definition provided by Black’s Law Dictionary  
7 (10<sup>th</sup> Edition, 2014), and is used rather than the simpler “possessor” terminology that may be  
8 found in property law to avoid any ambiguity between a person who is entitled to possession of  
9 the property in question and a person who might possess, own or operate an unmanned aircraft.

10  
11 “Person” is defined as in FAA Regulations, 14 C.F.R. § 1.1, and includes various forms  
12 of legal entities as well as individuals. While this is not identical to the standard ULC definition,  
13 its adoption allows consistency with federal regulations in this area.

14  
15 “Unmanned aircraft” is defined in the same way that the FAA has defined the term, 14  
16 C.F.R. § 1.1, but clarifies that the term in the short title has the same meaning as the technical  
17 term used throughout the Act.

18  
19 “Tort” is adapted from the definition provided by Black’s Law Dictionary (10<sup>th</sup> Edition,  
20 2014).

21  
22 **SECTION 3. SCOPE.** This [Act] applies to unmanned aircraft operations and the acts of  
23 those who own or operate, and are affected by, such operations.

24 **Comment**

25 This section makes clear that this act applies only to unmanned aircraft operations and  
26 should not be read to imply changes to any other area of the tort law of any state that adopts it.

27  
28 **SECTION 4. UNMANNED AIRCRAFT AND STATE TORT LAW.**

29 (a) An unmanned aircraft is an instrumentality by which a tort can be committed under  
30 the law [of this state].

31 (b) Except as provided for in this [act], and subject to any Constitutional rights or  
32 privileges, the common law and statutory tort law [of this state] shall apply to a person who owns  
33 or operates unmanned aircraft within [this state], or to any other person liable under the law of



1 [this state], including common law and statutory defenses, immunities and presumptions  
2 applicable in tort actions.

3 (c) In an action brought under this [act], the same remedies are available as in a tort  
4 action in [this state].

5 **Comment**

6 This section is intended to make clear that unmanned aircraft are subject to state tort law  
7 to the extent such laws are not preempted by federal law.

8  
9 Subsection (a) provides the general statement of applicability, while subsection (b)  
10 further makes clear that the application of tort law should be consistent with the entirety of the  
11 state’s tort doctrine to the extent not otherwise provided in the Act, and (c) clarifies that existing  
12 remedies within the state are available for tort violations under the Act.

13  
14 **SECTION 5. AERIAL TRESPASS BY UNMANNED AIRCRAFT.**

15 (a) A person is liable for aerial trespass if the person intentionally and without the  
16 consent of the land possessor operates an unmanned aircraft in the airspace over the land  
17 possessor’s real property and causes substantial interference with the use and enjoyment of the  
18 property.

19 (b) Factors that may be considered in determining whether operation of an unmanned  
20 aircraft caused substantial interference with the use and enjoyment of the property under  
21 subsection (a) of this section include:

- 22 (1) the nature of the use and enjoyment of the property;
- 23 (2) the operator’s purpose in operating the unmanned aircraft over the property;
- 24 (3) the altitude of the unmanned aircraft;
- 25 (4) the amount of time the unmanned aircraft was operated over the property;
- 26 (5) the frequency with which unmanned aircraft have operated over the property  
27 during the relevant time period;

1 (6) the type of unmanned aircraft and the nature of its operation over the property;

2 (7) whether the operation of the unmanned aircraft over the property directly  
3 caused physical or emotional injury to persons or damage to real or personal property on the  
4 property;

5 (8) whether the operation of the unmanned aircraft over the property directly  
6 caused economic damage;

7 (9) the time of day the unmanned aircraft was operated over the property;

8 (10) whether an individual on the property saw or heard the unmanned aircraft  
9 while it was over the property;

10 (11) whether and the extent to which the operation of the unmanned aircraft  
11 exceeded any consent given by the land possessor;

12 (12) regardless of the operator's purpose in operating an unmanned aircraft,  
13 whether the unmanned aircraft harassed persons, livestock or wildlife on the property; and,

14 (13) Any other relevant factors.

15 (c) Any claims for trespass involving aerial intrusion by unmanned aircraft must be  
16 brought under this section.

17 (d) Repeated or continual operation of unmanned aircraft over a land possessor's property  
18 does not create a prescriptive right in the airspace.

19 (e) There shall be a rebuttable presumption that the operation of an unmanned aircraft  
20 does not constitute substantial interference with the use and enjoyment of property under  
21 subsection (a) of this section if the unmanned aircraft was being operated for:

22 (1) law enforcement purposes in conformance with the requirements of the Fourth  
23 Amendment to the United States Constitution or the state constitution, including operation

1 pursuant to a warrant or other order issued by a court of competent jurisdiction;  
2 (2) purposes protected by the First Amendment; or,  
3 (3) purposes intended to provide public safety by authorized personnel in  
4 emergency situations.

5 (f) There shall be a rebuttable presumption that the operation of an unmanned aircraft at  
6 an altitude lower than the height of the tallest structure on the property constitutes substantial  
7 interference with the use and enjoyment of the property under subsection (a).

8 **Comment**

9 This section establishes the cause of action for aerial trespass as the exclusive cause of  
10 action for intrusions of unmanned aircraft into the airspace over land. This is a contentious but  
11 principled position adopted in the Act following significant debate and consideration of a wide  
12 variety of positions. The background for the approach taken here, along with its implications,  
13 follows.

14  
15 A common law maxim held that a landowner owned the surface of the land and the  
16 ground below it and sky above it, up to the heavens and down to the center of the earth. Known  
17 as the *ad coelum* doctrine, it was restated time and again by such experts as Lord Coke and  
18 Blackstone. As aviation began to take hold, however, from the start of the twentieth century it  
19 became quite apparent that the *ad coelum* doctrine was incompatible with air travel. As early as  
20 the development of balloons and zeppelins, commentators began discussing how airspace rights  
21 granted to landowners could hinder the development of air travel. In the 1946 case of *United*  
22 *States v. Causby*, the U.S. Supreme Court held that the *ad coelum* doctrine was incompatible  
23 with the modern world: “It is ancient doctrine that at common law ownership of the land  
24 extended to the periphery of the universe - *Cujus est solum ejus est usque ad coelum*. But that  
25 doctrine has no place in the modern world.” *United States v. Causby*, 328 U.S. 256, 260-261  
26 (1946).

27 The *Causby* Court then held that to establish a cause of action for a taking based on the  
28 use of airspace over property, the property’s owner must show that the flights substantially  
29 interfere with the use and enjoyment of the land. *Id.*, at 262. This test has been adopted by many  
30 state and lower federal courts since *Causby* was decided, and was eventually included in the  
31 Restatement (Second) of Torts, which formulated it this way: “Flight by an aircraft in the air  
32 space above the land of another is trespass if, but only if, (1) “it enters into the immediate  
33 reaches of the air space next to the land, and (2) it interferes substantially with the other's use and  
34 enjoyment of the land.” Restatement (Second) of Torts §159(2).

35 This section adopts the *Causby* and Restatement conceptions of aerial trespass, but adds  
36 additional clarity to it in light of the unique attributes of drones, namely that drones fly lower  
37 than manned aircraft and are generally quieter and less obtrusive even at those lower heights.

1 The additional clarity comes from the explicit identification of a non-exclusive list of potential  
2 factors for courts to consider when it is necessary to decide whether a trespass by drone has  
3 occurred. This approach is contrasted with one in which landowners hold title to some either  
4 undetermined or predetermined amount of airspace over their land. *See, e.g., Troy Rule,*  
5 *Airspace in an Age of Drones*, 95 *Bos. U. L. Rev.* 155 (2015) (arguing in favor of “new laws  
6 expressly entitling landowners to exclude drones from the airspace above the surface of their  
7 land to a height of 500 feet in most locations.” *Id.*, at 159).

8 Subsection (a) lays out the general test and is based on the *Causby* and Restatement  
9 formulations.

10 Subsection (b) then provides an inclusive list of factors that might be considered in any  
11 particular case. The list is extensive, but not exhaustive, and only those factors that are  
12 potentially relevant in any particular case need be addressed.

13 Subsection (b)(1) is a consideration of the how the property is used and by whom. A  
14 large, unoccupied tract of land would be viewed differently under this subsection than would a  
15 small, urban plot of land on which stands an inhabited single-family home.

16 Subsection (b)(2) allows consideration of why an unmanned aircraft was being operated  
17 over the property. If the operator’s purpose was to harass or annoy, that would counsel in favor  
18 of finding an aerial trespass on this factor, whereas one who is only transiting over the property  
19 would counsel in favor finding no aerial trespass on this factor. As unmanned aircraft use  
20 cameras and sensors to fly, and many of these sensors can record the data they receive, the  
21 purpose or activity of recording visual, audio or other data neither favors nor disfavors finding  
22 aerial trespass in any particular situation. If the purpose of the flight was to observe private  
23 behavior of the occupants, the addition of a recording of that activity would support a finding of  
24 aerial trespass. Where the unmanned aircraft was simply transiting the property, capturing data  
25 from the property would have less probative value.

26 Subsection (b)(3) takes the height of the flight into account. A lower flight may, in  
27 appropriate circumstances, favor the land possessor, while a higher altitude flight would likely  
28 favor the operator.

29 Subsection (b)(4) focuses the analysis on the amount of time the unmanned aircraft  
30 operated over the property and should be considered in light of the size of the property and speed  
31 of the unmanned aircraft. A quicker transit over property, in light of the size of the property and  
32 the unmanned aircraft’s speed, would favor the operator, while a longer transit, especially with  
33 time spent hovering over the property, would favor the land possessor.

34 Subsection (b)(5) encourages the court to consider how frequently unmanned aircraft  
35 have operated over the property. This factor additionally provides context for other factors and is  
36 especially relevant to factor (b)(6). The frequency of flights alone does not *per se* favor either the  
37 land possessor or the operator but may be relevant in considering additional factors. The time-  
38 period during which flights took place is also likely to be relevant to this inquiry. An unmanned  
39 aircraft that has been operated over land frequently over a short period of time is more likely to  
40 favor a finding of intrusion upon use and enjoyment of the land, while operations that have more

1 time between them is less likely to support such a conclusion, though even a single flight for an  
2 inappropriate purpose would support a claim of substantial interference.

3 Subsection (b)(6) relates to the kind of unmanned aircraft that was involved in the alleged  
4 aerial trespass, including its size and capabilities.

5 Subsection (b)(7) includes consideration of injury to the property or its owners or guests  
6 in the analysis. Operation of the unmanned aircraft that caused physical or emotional damage,  
7 regardless of whether the damage was intentional or the result of negligence, would favor a  
8 finding of aerial trespass. In contrast, the lack of physical or emotional damage favors a finding  
9 that an aerial trespass has not been proven.

10 Subsection (b)(8) adds economic damages to the considerations that are relevant to the  
11 inquiry. Operations that cause economic damage, as the flights in *Causby* did to the petitioner's  
12 farming operation, are likely to be supportive of a finding of aerial trespass. As with subsection  
13 (b)(7), a lack of provable economic damage favors a finding that no aerial trespass has occurred.

14 Subsection (b)(9) authorizes consideration of the time of day of the unmanned aircraft's  
15 operation over the land, and subsection (b)(10) makes clear that the extent of awareness of a  
16 person on the property of the operation of the unmanned aircraft is also relevant.

17 Subsection (b)(11), following the common law and Restatement rule that exceeding  
18 consent to enter land is a trespass, asks whether the operator stayed within any consent given by  
19 the land possessor. Where an operator remained within the consented boundaries of the land  
20 possessor's permission, whether those boundaries were physical or operational, this factor is  
21 likely to favor a finding of no aerial trespass. Where consent was exceeded, this factor would  
22 support a finding of aerial trespass.

23 Subsection (b)(12) asks whether the unmanned aircraft was used to harass livestock or  
24 wildlife on the property, and, where it was, would favor a finding of aerial trespass, while no  
25 harassment would favor a finding of no aerial trespass.

26 Subsection (b)(13) emphasizes the non-exclusive nature of the factors and encourages  
27 litigants and courts to consider any factors relevant to the finding whether a substantial intrusion  
28 into the use and enjoyment of the property had occurred in a particular case.

29 None of the factors listed should be viewed as determinative. Instead, they should be  
30 weighed and evaluated holistically. A factor that might weigh heavily in one case might be only  
31 tangentially relevant in another.

32 Subsection (c) requires that all actions based on the operation of an unmanned aircraft  
33 over a land possessor's land must be brought under this provision.

34 Subsection (d) precludes unmanned aircraft operators from claiming a right by  
35 prescription to the airspace above a land possessor's property, either as a result of the flight(s) of  
36 a single owner or operator's unmanned aircraft or as a result of the combined flights of more  
37 than one owner or operator's unmanned aircraft. While the ability to gain such prescriptive rights  
38 exists in many states in terms of land, it is the intent of this act to preclude the possibility of

1 unmanned aircraft operators gaining such prescriptive rights in airspace, and this section  
2 prohibits such an outcome regardless of the state’s otherwise existing right to gain rights or title  
3 to property by prescription.

4 Subsection (e) creates three rebuttable presumptions applicable to the determination of  
5 substantial intrusion on the use and enjoyment of property. The first presumption contained in  
6 subsection (e)(1) provides that unmanned aircraft are presumed not to substantially interfere with  
7 the use and enjoyment of property if the operation is part of law enforcement activity that is  
8 carried out in conformance with the requirements of the Fourth Amendment to the U.S.  
9 Constitution or corollary state constitutional provisions. The second presumption, contained in  
10 subsection (e)(2), provides that unmanned aircraft are presumed not to substantially intrude on  
11 the use and enjoyment of property if the operation is for purposes that are protected by the First  
12 Amendment to the U.S. Constitution or corollary state constitutional provisions. The second  
13 presumption, however, is not intended to create or imply the existence of a journalistic or First  
14 Amendment privilege to trespass. Just as reporters can be found liable for trespass on land in  
15 non-unmanned aircraft situations, *see, e.g., J.H. Desnick v. American Broadcasting Companies*,  
16 44 F.3d 1345 (7<sup>th</sup> Cir. 1995) (noting, “To enter upon another's land without consent is a trespass.  
17 The force of this rule has, it is true, been diluted somewhat by concepts of privilege and of  
18 implied consent. But there is no journalists' privilege to trespass.” *Id.*, at 1351); *see, also, Wilson*  
19 *v. Layne*, 526 U.S. 603 (1999) (Where police brought photographer to private home when  
20 seeking to make an arrest, Justice Breyer noted: “In my view, however, the homeowner's right to  
21 protection against this type of trespass was clearly established long before [*Wilson*]) (Breyer, J.,  
22 concurring in part and dissenting in part), this section does not sanction trespass by reporters  
23 under the guise of the First Amendment’s Free Speech and Press clause. Where a land possessor  
24 makes appropriate allegations tending to show that the operation of an unmanned aircraft  
25 intruded into the use and enjoyment of the land through the pleading of facts sufficient to satisfy  
26 relevant factors listed in § 5, a court should allow the action to proceed. Without strong  
27 allegations of this kind, however, cases involving activity protected by the First Amendment  
28 should not be allowed to proceed. The third presumption protects authorized persons who  
29 operate drones for public safety purposes.

30 **SECTION 6. TRESSPASS TO LAND BY UNMANNED AIRCRAFT.**

31 (a) Except as otherwise provided in subsection (b), a person is liable for trespass to land  
32 by an unmanned aircraft if the person intentionally

33 (1) lands an unmanned aircraft on a land possessor’s real property, or

34 (2) intentionally causes an unmanned aircraft to come into physical contact with a  
35 structure or plant on a land possessor’s real property.

36 (b) A person is not liable under subsection (a) if:

37 (1) the unmanned aircraft operator is forced to land the unmanned aircraft because

1 of unexpected circumstances that reasonably justify the landing; or

2 (2) the unmanned aircraft touches down due to a malfunction or because of  
3 weather or any other factor beyond the operator’s control.

4 (c) An operator or owner asserting the privileges provided in subsection (b) is liable for  
5 any damage caused by the unmanned aircraft’s operation.

6 (d) If an unmanned aircraft comes to rest on the real property of another, the unmanned  
7 aircraft’s owner or operator has the same right to recover it from the other’s real property as  
8 other state law provides to owners of other chattels that are on the land of another.

9 **Comment**

10 Section 6 makes clear that the traditional common law rules for trespass to land apply  
11 when there is an intentional physical invasion of the land of another without the consent of the  
12 owner or possessor of the land.

13  
14 Subsection (a) provides the general rule, which is consistent with the rule as delineated in  
15 the Restatement (Second) of Torts §158, which requires only intentional entering of land  
16 belonging to another. No intent to harm or intent to trespass is required and proof of damage is  
17 not required to make out a *prima facie* claim for trespass to land. Damages for injury, including  
18 injury to animals or individuals on the land possessor’s land, caused by any trespass under this  
19 subsection are addressed in §4, which provides for the applicability of, and remedies provided  
20 under the tort law of the state in question.

21  
22 Subsection (b) incorporates the privilege of private necessity into the Act in a way  
23 intended to be consistent with the formulation of the privilege contained in Restatement (Second)  
24 of Torts §197, and subsection (c) also follows the Restatement in holding the trespasser liable  
25 only for actual damages caused by the exercise of the privilege.

26  
27 Subsection (d) applies principles of property and tort law to unmanned aircraft that have  
28 come to rest on someone else’s property. While many states follow the Restatement’s rule for  
29 recovery of property that has come to rest on another’s land, *see*, Restatement (Second) Torts  
30 §198 (providing a privilege to enter another’s land at a reasonable time and in a reasonable  
31 manner to recover a chattel that has come upon the land “otherwise than with the actor’s consent  
32 or by his tortious conduct or contributory negligence,” but holding the chattel’s owner liable for  
33 damages caused by the entry) and *see also*, Restatement (Second) Torts §200 (“If a chattel is  
34 where it is by reason of the tortious conduct or contributory negligence of the actor, he is not  
35 privileged, except in case of public or private necessity, to enter land in the possession of another  
36 for the purpose of . . . removing the chattel from such land”), there are sufficient variations in  
37 state law to allow for continued state provisions to control on this issue.







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

3

4 **SECTION 10. EFFECTIVE DATE.** This [act] takes effect . . .