

MEMORANDUM

TO: Uniform Law Commission, Drafting Committee, Tort Law Relating to Drones Act
FROM: Paul Kurtz, Chair and Robert Heverly, Associate Reporter
DATE: February 8, 2019
RE: Tort Law Relating to Drones, October 2018 Committee Meeting

The Tort Law Relating to Drones Act received a first reading at the 2018 Annual Meeting in Louisville and has been substantially changed since that time. The attached draft reflects the work of the Committee's fall meeting in Detroit and the work of the subcommittee appointed to work out the details of the "aerial trespass" approach adopted in the Detroit session. That approach included the use of a totality of the circumstances test for determining whether an "aerial trespass" has been committed. The current draft also includes changes in format recommended by an informal style review. Specifically, it is no longer separated into articles, and begins with §1, rather than §101. This memorandum highlights various changes in structure and substance from the 2018 Annual Meeting text and makes note of particular questions before the Committee for its consideration at the March 1-3, 2019 meeting in Washington, D.C. A table that correlates sections from the previous drafts to current one is also attached.

I. Structure of the March 2019 Draft

The attached draft utilizes a new structure in comparison to the 2018 Annual Meeting draft. The substantive provisions now start with a general provision that states that a state's tort law applies to activities carried on using unmanned aircraft. This provision is inserted at the start of the substantive provisions as §4, and substitutes for a number of provisions in the Louisville draft relating to tort law more generally, but that were not intended to change existing state law.

Section 301 from the Louisville draft relating to aerial trespass is now §5 and has been retitled, "Airspace Intrusions." It has been substantially rewritten as a result of our Detroit deliberations and the work of the subcommittee. A new §6, "Intrusions onto Land," has been added to make clear that physical invasions of the surface of the land or things or persons on it is a trespass. §7, "Landowner Duties and Responsibilities," relates to landowner actions in relation to unmanned aircraft.

The 2018 Annual Meeting provisions relating to privacy (§302) have been replaced by the newly drafted §8, which applies a state's general privacy law to any unmanned aircraft related privacy violations, but also adopts a totality of the circumstances test to assist in determining the unmanned aircraft operator's intent to violate the privacy of others.

Finally, a new §9 requires that unmanned aircraft operators operate using reasonable care and that failure to exercise reasonable care that causes personal injury or damage to property will give rise to a claim in negligence.

II. Issues for Consideration

There are a number of narrow and a number of broader issues to be considered by the Committee at the March 2019 meeting. These issues include:

- (1) Whether a definition of “operator” should be included in the Act;
- (2) Whether the question of “self-help” should be explicitly addressed in the Act beyond the provisions included in §7;
- (3) Whether §7, which imposes duties on landowners without regard to the status of the individual (or here, unmanned aircraft) in question, should be bracketed because some states still retain the common law categories of trespasser, licensee, and business invitee;
- (4) Whether the totality of the circumstances approach to intent in §8’s privacy provision should be retained and, if so, whether the factors listed should be altered or supplemented; and,
- (5) Whether any changes should be made to the factors included in §5’s totality of the circumstances provision.