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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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May 3, 2019

## **TORT LAW RELATING TO DRONES ACT**

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# TORT LAW RELATING TO DRONES ACT

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1 **UNIFORM TORT LAW RELATED 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 Related 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 Related  
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 related 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 Related 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 landowner interests from intrusive drone incursions  
22 while not inhibiting the ability of drones to operate in drone-navigable airspace;
- 23 • It clarifies that intentional drone intrusions on land are trespasses to land;
- 24 • It clarifies the application of landowner duties to drones operating above or  
25 having crashed or landed on the landowner’s property;
- 26 • It applies existing state tort law privacy protections to drone operations or,  
27 alternatively, creates a privacy law for drones in states which do not have an  
28 applicable existing privacy tort; 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 Related 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).

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**TORT LAW RELATING TO DRONES ACT**

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

**Comment**

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

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

(1) “Person” means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.

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

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

(4) “Land Possessor” means a person who rents, leases or otherwise has a legal right to

1 be in possession of the property.

2 **Comment**

3 “Person” is defined as in FAA Regulations, 14 C.F.R. § 1.1, and includes various forms  
4 of legal entities as well as individuals. While this is identical to the standard ULC definition, its  
5 adoption allows consistency with federal regulations in this area.

6  
7 “Unmanned aircraft” is defined in the same way that the FAA has defined the term, 14  
8 C.F.R. § 1.1, but clarifies that the term in the short title has the same meaning as the technical  
9 term used throughout the Act.

10  
11 “Tort” is adapted from the definition provided by Black’s Law Dictionary (10<sup>th</sup> Edition,  
12 2014).

13  
14 “Land Possessor” is adapted from the definition provided by Black’s Law Dictionary  
15 (10<sup>th</sup> Edition, 2014), and is used rather than the simpler “possessor” terminology that may be  
16 found in property law to avoid any ambiguity between a person who is entitled to possession of  
17 the property in question and a person who might possess, own or operate an unmanned aircraft.

18  
19 **SECTION 3. SCOPE.** This [Act] applies to unmanned aircraft operations and the acts  
20 of those who operate, and are affected by, such operations.

21 **Comment**

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

24  
25 **SECTION 4. UNMANNED AIRCRAFT AND STATE TORT LAW.**

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

28 (b) Except as provided for in this [Act], and subject to any Constitutional rights or  
29 privileges, the common law and statutory tort law [of this state] shall apply to a person who owns  
30 or operates unmanned aircraft within [this state], or to any other person liable under the law of  
31 [this state], including common law and statutory defenses, immunities and presumptions  
32 applicable in tort actions.

33 (c) In an action brought under this [Act], remedies, civil damages and other remedies



1 shall be available as provided for actions brought under tort law in [this state].

2 **Comment**

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

5  
6 Subsection (a) provides the general statement of applicability, while subsection (b)  
7 further makes clear that the application of tort law should be consistent with the entirety of the  
8 state's tort doctrine to the extent not otherwise provided in the Act, and (c) clarifies that existing  
9 remedies within the state are available for tort violations under the Act.

10  
11 **SECTION 5. AERIAL TRESPASS BY UNMANNED AIRCRAFT.**

12 (a) An aerial trespass occurs when a person intentionally and without the consent of the  
13 landowner or land possessor operates an unmanned aircraft in the airspace over the landowner's  
14 or land possessor's property causing substantial interference with the use and enjoyment of the  
15 property.

16 (b) The determination of whether an unmanned aircraft's operation over property has  
17 caused substantial interference with the use and enjoyment of the property shall be based upon a  
18 consideration of relevant factors, including:

- 19 (1) The nature of the use and enjoyment of the property;
- 20 (2) The operator's purpose in operating the unmanned aircraft over the property;
- 21 (3) The altitude at which the unmanned aircraft was operating over the property;
- 22 (4) The amount of time the unmanned aircraft was operated over the property;
- 23 (5) The frequency with which unmanned aircraft have operated over the property  
24 during the relevant time period;
- 25 (6) The type of unmanned aircraft and the nature of its operation over the  
26 property;
- 27 (7) Whether the operation of the unmanned aircraft over the property directly

1 caused physical or emotional damage to persons or real or personal property on the property;

2 (8) Whether the operation of the unmanned aircraft over the property directly

3 caused economic damage;

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

5 (10) Whether an individual on the property saw or heard the unmanned aircraft

6 while it was over the property;

7 (11) Whether and the extent to which the operation of the unmanned aircraft

8 exceeded the consent given to the operator;

9 (12) Regardless of the operator's purpose in operating an unmanned aircraft,

10 whether the unmanned aircraft harassed persons, livestock or wildlife on the property; and,

11 (13) Any other factor relevant to the determination of substantial interference with

12 the use and enjoyment the property.

13 (c) All claims for trespass involving aerial intrusions by unmanned aircraft shall be

14 brought under this section.

15 (d) Repeated or continual operation of unmanned aircraft over a landowner's or land

16 possessor's property shall not give rise to prescriptive rights in the airspace.

17 (e) There shall be a rebuttable presumption that the operation of an unmanned aircraft

18 does not constitute substantial interference with property if the unmanned aircraft was being

19 operated for:

20 (1) Law enforcement purposes in conformance with the requirements of the

21 Fourth Amendment to the United States Constitution or the state constitution, including

22 operation pursuant to a warrant or other order issued by a court of competent jurisdiction; or,

23 (2) Purposes protected by the First Amendment.

1 **Comment**

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

7  
8 A common law maxim held that a landowner owned the surface of the land and the  
9 ground below it and sky above it, up to the heavens and down to the center of the earth. Known  
10 as the *ad coelum* doctrine, it was restated time and again by such experts as Lord Coke and  
11 Blackstone. As aviation began to take hold, however, from the start of the twentieth century it  
12 became quite apparent that the *ad coelum* doctrine was incompatible with air travel. As early as  
13 the development of balloons and zeppelins, commentators began discussing how airspace rights  
14 granted to landowners could hinder the development of air travel. In the 1946 case of *United*  
15 *States v. Causby*, the U.S. Supreme Court held that the *ad coelum* doctrine was incompatible  
16 with the modern world: “It is ancient doctrine that at common law ownership of the land  
17 extended to the periphery of the universe - *Cujus est solum ejus est usque ad coelum*. But that  
18 doctrine has no place in the modern world.” *United States v. Causby*, 328 U.S. 256, 260-261  
19 (1946).

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

28 This section adopts the *Causby* and Restatement conceptions of aerial trespass, but adds  
29 additional clarity to it in light of the unique attributes of drones, namely that drones fly lower  
30 than manned aircraft and are generally quieter and less obtrusive even at those lower heights.  
31 The additional clarity comes from the explicit identification of a non-exclusive list of potential  
32 factors for courts to consider when it is necessary to decide whether a trespass by drone has  
33 occurred. This approach is contrasted with one in which landowners hold title to some either  
34 undetermined or predetermined amount of airspace over their land. *See, e.g.*, Troy Rule,  
35 *Airspace in an Age of Drones*, 95 Bos. U. L. Rev. 155 (2015) (arguing in favor of “new laws  
36 expressly entitling landowners to exclude drones from the airspace above the surface of their  
37 land to a height of 500 feet in most locations.” *Id.*, at 159).

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

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

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

4 Subsection (b)(2) allows consideration of why an unmanned aircraft was being operated  
5 over the property. If the operator's purpose was to harass or annoy, that would counsel in favor  
6 of finding an aerial trespass on this factor, whereas one who is only transiting over the property  
7 would counsel in favor finding no aerial trespass on this factor. As unmanned aircraft use  
8 cameras and sensors to fly, and many of these sensors can record the data they receive, the  
9 purpose or activity of recording visual, audio or other data neither favors nor disfavors finding  
10 aerial trespass in any particular situation. If the purpose of the flight was to observe private  
11 behavior of the occupants, the addition of a recording of that activity would support a finding of  
12 aerial trespass. Where the unmanned aircraft was simply transiting the property, capturing data  
13 from the property would have less probative value.

14 Subsection (b)(3) takes the height of the flight into account. A lower flight may, in  
15 appropriate circumstances, favor the landowner, while a higher altitude flight would likely favor  
16 the operator.

17 Subsection (b)(4) focuses the analysis on the amount of time the unmanned aircraft  
18 operated over the property and should be considered in light of the size of the property and speed  
19 of the unmanned aircraft. A quicker transit over property, in light of the size of the property and  
20 the unmanned aircraft's speed, would favor the operator, while a longer transit, especially with  
21 time spent hovering over the property, would favor the landowner.

22 Subsection (b)(5) encourages the court to consider how frequently unmanned aircraft  
23 have operated over the property. This factor additionally provides context for other factors and is  
24 especially relevant to factor (b)(6). The frequency of flights alone does not *per se* favor either the  
25 landowner or the operator but may be relevant in considering additional factors. The time-period  
26 during which flights took place is also likely to be relevant to this inquiry. An unmanned aircraft  
27 that has been operated over land frequently over a short period of time is more likely to favor a  
28 finding of intrusion upon use and enjoyment of the land, while operations that have more time  
29 between them is less likely to support such a conclusion, though even a single flight for an  
30 inappropriate purpose would support a claim of substantial interference.

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

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

38 Subsection (b)(8) adds economic damages to the considerations that are relevant to the  
39 inquiry. Operations that cause economic damage, as the flights in *Causby* did to the petitioner's  
40 farming operation, are likely to be supportive of a finding of aerial trespass. As with subsection

1 (b)(7), a lack of provable economic damage favors a finding that no aerial trespass has occurred.

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

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

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

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

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

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

22 Subsection (d) precludes unmanned aircraft operators from claiming a right by  
23 prescription to the airspace above a landowner's property, either as a result of the flight(s) of a  
24 single owner or operator's unmanned aircraft or as a result of the combined flights of more than  
25 one owner or operator's unmanned aircraft. While the ability to gain such prescriptive rights  
26 exists in many states in terms of land, it is the intent of this act to preclude the possibility of  
27 unmanned aircraft operators gaining such prescriptive rights in airspace, and this section  
28 prohibits such an outcome regardless of the state's otherwise existing right to gain rights or title  
29 to property by prescription.

30 Subsection (e) creates two rebuttable presumptions applicable to the determination of  
31 substantial intrusion on the use and enjoyment of property. The first presumption contained in  
32 subsection (e)(1) provides that unmanned aircraft are presumed not to substantially interfere with  
33 the use and enjoyment of property if the operation is part of law enforcement activity that is  
34 carried out in conformance with the requirements of the Fourth Amendment to the U.S.  
35 Constitution or corollary state constitutional provisions. The second presumption, contained in  
36 subsection (e)(2), provides that unmanned aircraft are presumed not to substantially intrude on  
37 the use and enjoyment of property if the operation is for purposes that are protected by the First  
38 Amendment to the U.S. Constitution or corollary state constitutional provisions. The second  
39 presumption, however, is not intended to create a journalistic or First Amendment privilege to  
40 trespass. Just as reporters can be found liable for trespass on land in non-unmanned aircraft

1 situations, *see, e.g., J.H. Desnick v. American Broadcasting Companies*, 44 F.3d 1345 (7<sup>th</sup> Cir.  
2 1995) (noting, “To enter upon another's land without consent is a trespass. The force of this rule  
3 has, it is true, been diluted somewhat by concepts of privilege and of implied consent. But there  
4 is no journalists' privilege to trespass.” *Id.*, at 1351. *See, also, Wilson v. Layne*, 526 U.S. 603  
5 (1999) (Where police brought photographer to private home when seeking to make an arrest,  
6 Justice Breyer noted: “In my view, however, the homeowner's right to protection against this  
7 type of trespass was clearly established long before [*Wilson*]) (Breyer, J., concurring in part and  
8 dissenting in part). Where a landowner can make a strong showing that the operation of an  
9 unmanned aircraft intruded into the use and enjoyment of the land through the existence of  
10 evidence satisfying multiple factors in Section 5, a court should allow the action to proceed.  
11 Without strong evidence of this kind, however, cases involving activity protected by the First  
12 Amendment should not be allowed to proceed.

### 13 SECTION 6. INTRUSIONS ON LAND.

14 (a) Except as provided in subsection (b) a trespass to land by unmanned aircraft occurs  
15 when an operator intentionally lands an unmanned aircraft on the land of another, or  
16 intentionally causes an unmanned aircraft to come into physical contact with a structure, plant or  
17 animal life, individual, or chattel on the land of another.

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

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

21 (2) the unmanned aircraft malfunctions or otherwise touches down upon the  
22 surface of the land because of weather or other factors beyond the operator's control.

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

25 (d) Where an unmanned aircraft has come to rest on the land of another other than by the  
26 operator's consent or other than by the operator's tortious conduct, the owner or operator of the  
27 unmanned aircraft has a right to recover the unmanned aircraft upon a request to the landowner  
28 or land possessor. A landowner or land possessor shall not unreasonably refuse a request to  
29 return the unmanned aircraft or to permit the unmanned aircraft's owner or operator to recover

1 the unmanned aircraft from the property.

2 **Comment**

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

6  
7 Subsection (a) provides the general rule, which is consistent with the rule as delineated in  
8 the Restatement (Second) of Torts §158, which requires only intentional entering of land  
9 belonging to another. No intent to harm or intent to trespass is required and proof of damage is  
10 not required to make out a *prima facie* claim for trespass to land.

11  
12 Subsection (b) incorporates the privilege of private necessity into the Act in a way  
13 intended to be consistent with the formulation of the privilege contained in Restatement (Second)  
14 of Torts §197, and subsection (c) also follows the Restatement in holding the trespasser liable  
15 only for actual damages caused by the exercise of the privilege.

16  
17 Subsection (d) is adapted from the Restatement’s rule for recovery of property that has  
18 come to rest on another’s land. *See*, Restatement (Second) Torts §198 (providing a privilege to  
19 enter another’s land at a reasonable time and in a reasonable manner to recover a chattel that has  
20 come upon the land “otherwise than with the actor's consent or by his tortious conduct or  
21 contributory negligence,” but holding the chattel’s owner liable for damages caused by the  
22 entry). *See also*, Restatement (Second) Torts §200 (“If a chattel is where it is by reason of the  
23 tortious conduct or contributory negligence of the actor, he is not privileged, except in case of  
24 public or private necessity, to enter land in the possession of another for the purpose of ...  
25 removing the chattel from such land”).

26  
27 **SECTION 7. LANDOWNER AND LAND POSSESSOR DUTIES AND**  
28 **RESPONSIBILITIES.**

29 (a) A landowner or land possessor shall act with reasonable care in relation to known  
30 unmanned aircraft operating in the airspace over the landowner’s or land possessor’s property.

31 (b) A landowner or land possessor who is not otherwise authorized by federal law and  
32 who initiates any active counter measures in response to the flight of unmanned aircraft over the  
33 land is liable in tort for any damage caused to unmanned aircraft by the counter actions taken.

34 (c) A landowner or land possessor owes no duty to ensure that the airspace above the  
35 landowner’s or land possessor’s property is free from natural or artificial obstructions.

1 **Comment**

2 This section makes clear that a landowner owes the same duties to unmanned aircraft  
3 operating over his or her property as are owed to persons who are on their property. The modern  
4 trend in tort law has been to adopt a “reasonableness” standard in relation to individuals who are  
5 on a property, replacing the common law distinctions based on status of the person on the  
6 property as an invitee, licensee or trespasser. In other words, even if a landowner believes an  
7 unmanned aircraft is being operated such that its presence over the property constitutes aerial  
8 trespass, it may not act in an unreasonable manner in relation to that unmanned aircraft.

9 Federal law prohibits destroying or otherwise interfering with an aircraft. 18 U.S.C. § 32;  
10 *see also*, 49 U.S.C. § 46501 (which brings all aircraft into the “special aircraft jurisdiction of the  
11 United States”). As the FAA has categorized unmanned aircraft as aircraft, intentional actions to  
12 shoot down, disable or capture the aircraft would be in violation of federal law, and are  
13 prohibited by subdivision (b) of this section, as well. Subsection (b) thus provides a private cause  
14 of action by the owner of an unmanned aircraft damaged by active counter measures initiated by  
15 a land owner or land possessor, including such measures as the shooting down of an unmanned  
16 aircraft or the use of radio frequency jammers or other technologies to damage, destroy or  
17 interfere with the operation of an unmanned aircraft.

18 Subdivision (c) acknowledges the right of landowners and land possessors to build and  
19 use their properties, while also acknowledging that landowners and land possessors owe no duty  
20 to unmanned aircraft operators to make the airspace over their properties obstruction free such  
21 that unmanned aircraft can more easily operate over the property. This subsection is not intended  
22 to create any right for landowners or land possessors to build structures on the property apart  
23 from or in addition to those provided for in local, state and federal building, zoning or related  
24 development laws, regulations and ordinances.

25 **SECTION 8. UNMANNED AIRCRAFT AND VIOLATIONS OF PRIVACY.** An  
26 unmanned aircraft can be the instrumentality by which a tort in violation of privacy rights may  
27 be committed under federal or state law.

28 **Comment**

29  
30 Unmanned aircraft have a number of characteristics that ostensibly raise concerns  
31 regarding the privacy of those who can be observed by them. In addition to any actual  
32 surveillance, the operation of unmanned aircraft may raise concerns among those who can see  
33 the unmanned aircraft but who cannot or do not see its operator. Yet, many states already have in  
34 place laws that would apply privacy principles to the operation of unmanned aircraft, though the  
35 doctrines and their applications vary – sometimes significantly – from state to state. The  
36 potential for introducing duplicative or conflicting provisions into state law is thus avoided by  
37 making clear that existing state law should be applied to actions taken using unmanned aircraft.  
38

39 This does not diminish concerns raised by specific characteristics of unmanned aircraft  
40 operation, namely the low-level flights of unmanned aircraft and the perceived anonymity of



1 their operation. This explicit clarification of the application of privacy principles to the operation  
2 of unmanned aircraft thus serves a signaling function for the public and the industry and makes  
3 clear that the state takes privacy concerns seriously, a reassurance citizens may seek in relation to  
4 the act.

5  
6 The provision should thus apply similarly to unmanned aircraft technology as it does to  
7 other technology. If it would be a violation of privacy rights to observe a person through the  
8 windows in their bedroom using a telescope or a camera with a telephoto lens, then observing  
9 that person using an unmanned aircraft hovering outside the window should likewise be a  
10 violation of privacy rights. If it would be a privacy violation to climb a tree near someone's  
11 house and observe them that person in a yard behind a privacy fence, then it would likewise be a  
12 privacy violation to fly an unmanned aircraft above the level of the fence and do the same.

13  
14 **SECTION 9. NEGLIGENT OPERATION OF AN UNMANNED AIRCRAFT.**

15 (a) The common law and statutory negligence law of this state shall apply to an  
16 unmanned aircraft operator.

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

19 (c) For purposes of this section, the standard of care required of an unmanned aircraft  
20 operator is that level of care required by the Federal Aviation Administration or other applicable  
21 federal authority, or, in the absence of an applicable federal standard of care, the level of care as  
22 determined by the [law of this state].

23 **Comment**

24 This section explicitly incorporates the unmanned aircraft operator's general duty of care  
25 into the act and clarifies that the standard of care for an unmanned aircraft operator is a national  
26 one based on the standards set by the FAA. Where the FAA has not set a standard of care in any  
27 particular case, the standard of care is to be determined according to the negligence law of the  
28 state.

29  
30 **SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
31 applying and construing this [Uniform Act], consideration must be given to the need to promote  
32 uniformity of the law with respect to its subject matter among the states that enact it.

33 **SECTION 11. SAVINGS CLAUSE.** This [Act] does not affect the validity or effect of

1 a notarial act performed before [the effective date of this [Act]].

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

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

8

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