



**SMALL UAV
COALITION**
*A Partnership for
Safety & Innovation*



TechNet
The Voice of the Innovation Economy



CompTIA The IT Industry
Trade Association

January 9, 2017

Rep. Jeff Morris
Chair, House Technology and Economic Development Committee
436A Legislative Building
PO Box 40600
Olympia, WA 98504

Re: House Bill 1049

Dear Chair Morris and members of the House Technology & Economic Development Committee:

We understand that House Bill 1049, an act relating to unmanned aircraft, may be considered in a hearing on Tuesday, January 10. We have serious concerns with the bill as drafted, as it would intrude on the Federal Aviation Administration's plenary authority over aircraft, aircraft operations, and the navigable airspace, and would significantly harm the growing unmanned aircraft industry thereby denying the public the many beneficial uses of drones. Accordingly, we urge Members to oppose this measure.

Proposed section 1 would make a UAS operation unlawful unless the aircraft is labeled with the name and phone number of the aircraft owner and operator or if the operation is conducted over private property without the consent of the property owner or occupant.

The labeling requirement in proposed section 1 is in conflict with Federal requirements imposed by the FAA in its online registration rule published in 2015. Subpart C of Part 48 of Title 14, Code of Federal Regulations, requires each unmanned aircraft to display a unique identifier, which is either a registration number or a serial number. Registrants are required by 14 C.F.R. §48.100 to provide their name, physical address and email address. They are not required to provide a phone number. Because proposed section 1 conflicts with the Federal requirements, it is preempted under the Supremacy Clause, Article VI of the Constitution of the United States.

The prohibition on operating an unmanned aircraft over the private property of a person who objects to such operation is also preempted by Federal law. Neither States nor local governments may regulate the navigable airspace. Even if private property owners have the right to the use

and enjoyment of the “immediate reaches” of the airspace, that right is held by a property owner and is not authority for local regulation. Moreover, proposed section 1 does not provide for an altitude limit above which an unmanned operation would be lawful. Thus, the proposal clearly would interfere with the FAA’s plenary control of the navigable airspace.¹

Proposed section 2 would create a trespass remedy against the operator of an unmanned aircraft who operates a drone over private property after the property owner objects to the drone operator or owner.² While we do not object to the availability of preexisting trespass and nuisance remedies under common or statutory law, proposed section 2 represents a marked departure from settled jurisprudence. Proposed paragraph (3) would allow a property owner to recover liquidated damages of \$500 (and under paragraph 5, attorney fees) even without any proof that the UAS operation caused any damages. This would invite property owners to file lawsuits even where there have been no damages, and could flood the courts with unprovable claims. We believe the Restatement (Second) of Torts §159(2) sets forth the proper standard for an “aerial trespass,” which requires both a flight at a low altitude (within the “immediate reaches” of the property owner) and a showing of “substantial” interference with the property owner’s use and enjoyment of the property.

- (2) Flight by aircraft in the air space above the land of another is a trespass if, but only if,
 - (a) it enters into the immediate reaches of the air space next to the land, and
 - (b) it interferes substantially with the other’s use and enjoyment of his land.

The liquidated damages provision may be based on Restatement (Second) of Torts §158, but that provision clearly applies to trespass on the surface of property, not to trespass by aircraft. In addition to not requiring substantial interference with the property owners’ enjoyment, Section 2 does not provide any altitude limit above which a trespass claim would not lie, and thus it would expose many UAS operations to a tort remedy even where the flight is above the “immediate reaches” of the airspace.

We also oppose the availability of injunctive relief in paragraph (3). While a monetary remedy addresses the damages from an aerial trespass, an injunction would likely interfere with the FAA’s control of the navigable airspace. That is because the effect of an injunction would enjoin a particular path of flight in airspace regulated exclusively by the FAA. The availability of injunctive relief in the bill is also legally infirm because it would apply above the “immediate reaches” of the airspace above the property.

¹ We recognize these prohibitions would not apply to an unmanned aircraft lawfully in the process of landing or taking off, “pursuant to specific federal authorization.” By defining the term “federal authorization” as “lawfully permitted under the federal aviation administration modernization and reform act of 2012, P. L. 112-95, as in effect on January 1, 2015”, it is unclear whether the recently promulgated FAA final rule on unmanned aircraft systems (14 C.F.R. Part 107), effective August 29, 2016, is included, as it should be. That rule was directed by sections 332 and 333 of P. L. 112-95.

² Like section 1, section 2 would not apply to an unmanned aircraft lawfully in the process of landing or taking off, “pursuant to specific federal authorization.” As with respect to section 1, the definition of “federal authorization” is unclear.

For the reasons stated above, we urge you to oppose House Bill 1049 as currently drafted.

Sincerely,

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CompTIA
David Evans and Associates, Inc.
Echodyne Corporation
Freefly Systems
Lockwood Associates, Inc.
Sagotech Corporation
Small UAV Coalition
TechNet
Washington Technology Industry Association
Zepher Inc.

CC: Lily Smith, Committee Counsel
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