



Via e-mail

January 18, 2022

Representative Ben Baker
Chair, Committee on Downsizing State Government
Missouri House of Representatives

Re: **House Bill No. 1619**

Dear Chairman Baker:

We the undersigned organizations urge the Missouri House of Representatives to reject proposed House Bill No. 1619 (“HB 1619”). HB 1619 would criminalize the operation of drones over private property to capture images without the consent of the property owner. Although well-intentioned, adoption of HB 1619 would curtail industry growth and harm local drone businesses and all those who benefit from this versatile technology.

As a champions of innovation, we are long-time advocates of clear rules authorizing drones in a safe manner within the national airspace. We have been continually involved in the Federal Aviation Administration (“FAA”) rulemaking activities concerning the operation and certification of small drones. Many of our members are supporters of the *Know Before You Fly* campaign, which educates prospective drone users about the safe and responsible operation of drones.

The explosive growth of the drone industry has prompted legislators in many states and localities to propose legislation regulating the industry or otherwise trying to address potential concerns related to drones. Before considering new legislation, however, lawmakers should evaluate whether (i) proposed regulations are preempted, (ii) the conduct at issue may already be addressed by existing state laws, and (iii) drone-specific legislation is warranted.

In this case, HB 1619 should not be adopted because drone-specific legislation is not warranted. The State of Missouri already has a statute that prohibits taking an image of a person with a reasonable expectation of privacy under certain conditions.¹ This law is technology neutral and applies to aerial photography taken by a drone. There is no reason to adopt new, technology-specific privacy laws.

Adoption of new laws applicable only to drone photography would be bad policy. If the Missouri Legislature believes that a person is entitled to privacy and should be protected from unwanted photography, that privacy right should apply generally. Where the right applies, a person should be protected from photography regardless of the technology used. It should not matter whether a photograph is taken by a drone, an aerial balloon, helicopter, or other mechanism. Simply put, a person’s rights to privacy should not hinge on the technology used to take photographs. Moreover, amending existing laws and adopting new statutes targeting specific technologies may cause confusion for both law enforcement

¹ MO Rev Stat § 565.252.

and for harmed parties, and would unnecessarily generate the need to amend laws as new technologies that potentially could be used to invade a person's privacy are developed.

Further, HB 1619 is overbroad because it prohibits all photography that captures an image of a person without consent – even if the person is in a public place. As written, it would be illegal to take a panoramic photograph if the image includes individuals that did not provide consent. The legislation should carve out innocent photography that happens to capture individuals in the background. We suggest that any legislation prohibiting photography – via drone or other mechanism – should contain an intent component. Under this approach, it would be illegal to photograph a specific person or persons (or specific portions of private property) only where there is a reasonable expectation of privacy. Aerial photography that inadvertently captures private property or individuals should not give rise to criminal liability.

HB 1619's prohibitions in sections 3 and 4 extend to the use of a drone to “create an image” in addition to taking a photograph. That term is not defined, and the concern is that it may be construed to cover the capturing of an image by a drone solely for purposes of air navigation, as well as the unintentional capturing of an image incidental to images captured intentionally for the safety and efficiency of the drone operation. No privacy bill should compromise the safety or efficiency of aircraft operations.

For these reasons, we oppose enactment of HB 1619.

Sincerely,

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cc: Representative Dean Van Schoiack