

1 HB498
2 182696-1
3 By Representative Sells
4 RFD: Judiciary
5 First Read: 11-APR-17

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8 SYNOPSIS: This bill would create the Alabama Unmanned
9 Aircraft Systems Act to prohibit the use of an
10 unmanned aircraft system to fly over certain
11 designated manufacturing and commercial facilities
12 without permission of the owner of the facility,
13 with exceptions, and to harass persons; would
14 provide criminal penalties for violations; and
15 would authorize injunctive relief.

16 This bill would revise various existing
17 crimes to include the use of an unmanned aircraft
18 system to commit a crime.

19 This bill would prohibit the sale,
20 transport, manufacture, or possession of a system
21 equipped with a weapon.

22 This bill would also prohibit governmental
23 agencies from using unmanned aircraft systems to
24 gather evidence or other information, except under
25 certain conditions, and would authorize the
26 initiation of a civil action by persons injured by
27 violations.

1 This bill would provide the Department of
2 Transportation with rulemaking authority.

3 Amendment 621 of the Constitution of Alabama
4 of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of
6 Alabama of 1901, as amended, prohibits a general
7 law whose purpose or effect would be to require a
8 new or increased expenditure of local funds from
9 becoming effective with regard to a local
10 governmental entity without enactment by a 2/3 vote
11 unless: it comes within one of a number of
12 specified exceptions; it is approved by the
13 affected entity; or the Legislature appropriates
14 funds, or provides a local source of revenue, to
15 the entity for the purpose.

16 The purpose or effect of this bill would be
17 to require a new or increased expenditure of local
18 funds within the meaning of the amendment. However,
19 the bill does not require approval of a local
20 governmental entity or enactment by a 2/3 vote to
21 become effective because it comes within one of the
22 specified exceptions contained in the amendment.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 13A-6-24, 13A-6-90.1, 13A-7-22,
2 13A-10-2, 13A-10-38, 13A-11-32, and 23-1-388, Code of Alabama
3 1975, relating to the operation of an unmanned aircraft
4 system; to prohibit the use of an unmanned aircraft system to
5 fly over certain designated facilities and to provide for
6 criminal penalties, injunctive relief under certain
7 conditions, and damages for violations; to prohibit
8 governmental agencies from using unmanned aircraft systems to
9 gather evidence or other information, with exceptions; to
10 revise existing crimes to include the commission of the crime
11 by an unmanned aircraft system; to provide rulemaking
12 authority; and in connection therewith would have as its
13 purpose or effect the requirement of a new or increased
14 expenditure of local funds within the meaning of Amendment 621
15 of the Constitution of Alabama of 1901, now appearing as
16 Section 111.05 of the Official Recompilation of the
17 Constitution of Alabama of 1901, as amended.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 1 through 9, inclusive, of this
20 act shall be known and may be cited as the Alabama Unmanned
21 Aircraft Systems Act.

22 Section 2. The Legislature finds and declares the
23 following:

24 (1) That Unmanned Aircraft System technology
25 represents a great new frontier in research and development
26 and a substantial economic opportunity.

1 (2) That Unmanned Aircraft System technology also
2 raises substantial issues of privacy and safety that should be
3 addressed in a reasonable and measured manner.

4 (3) That the Federal Aviation Administration
5 regulates safety and other operational aspects of Unmanned
6 Aircraft System operation in Federal Aviation Administration
7 controlled airspace.

8 (4) That state-based policies have been created by
9 the Alabama Unmanned Aircraft Systems Council to provide
10 reasonable and measured regulation of Unmanned Aircraft System
11 use.

12 Section 3. For purposes of Sections 1 to 9,
13 inclusive, of this act, the following words shall have the
14 following meanings:

15 (1) DESIGNATED FACILITY. The following facilities:

16 a. Petroleum refineries.

17 b. Chemical and rubber manufacturing facilities.

18 c. Petroleum or chemical storage facilities.

19 d. Electric generation facilities, substations,
20 switching stations, control centers, transmission and
21 distribution facilities, and other electric utility
22 communications facilities and associated plants.

23 e. Rail facilities from which public access is
24 limited, controlled, or restricted.

25 f. Commercial port and harbor facilities.

26 g. Drinking water treatment facilities.

1 h. Forest product manufacturing facilities,
2 including pulp, paper, and saw mills.

3 i. Any other facility designated as "critical
4 infrastructure" pursuant to 18 U.S.C.A. § 2339D.

5 (2) GOVERNMENT AGENCY. Any municipal, county, state,
6 or federal agency, the personnel of which have the power of
7 arrest and the performance of a law enforcement function, and
8 any third-party unmanned aircraft system operator retained by
9 any of the agencies above to act on the agencies' behalf. The
10 term does not include public educational institutions or
11 research institutions, except when an institution is utilizing
12 a unmanned aircraft system in a law enforcement capacity.

13 (3) MANNED AIRCRAFT. An aircraft that is operated
14 with a person in or on the aircraft.

15 (4) UNMANNED AIRCRAFT SYSTEM.

16 a. A powered, aerial vehicle that:

17 1. Does not carry a human operator.

18 2. Uses aerodynamic forces to provide vehicle lift.

19 3. May fly autonomously through an onboard computer
20 or be piloted remotely.

21 4. May be expendable or recoverable.

22 b. The term does not include a satellite orbiting
23 the Earth or a spacecraft beyond Earth's atmosphere, and may
24 not be construed to implicate the provider of a
25 telecommunications link between an owner or operator of an
26 unmanned aircraft system and the unmanned aircraft system.

1 Section 4. (a) (1) Except as provided in subdivision
2 (2), any of the following constitutes the unlawful use of an
3 unmanned aircraft system:

4 a. The use of an unmanned aircraft system to
5 intentionally conduct surveillance of, gather evidence or
6 collect information about, or photographically or
7 electronically record, a designated facility, without the
8 prior written consent of the owner or operator of the
9 designated facility.

10 b. The intentional distribution, posting, or sharing
11 of any kind of information, including audio, video, or
12 photographic recordings, obtained through the unlawful use of
13 an unmanned aircraft system without the prior written consent
14 of the owner or operator of the designated facility.

15 c. The intentional harassment, as defined by Section
16 13A-11-8, Code of Alabama 1975, of a person, including a
17 person who is hunting or fishing in compliance with the laws
18 of this state.

19 (2) This section does not apply to any of the
20 following:

21 a. A third party retained by the owner of the
22 property or the operator of a designated facility using an
23 unmanned aircraft system to conduct activities prohibited in
24 subdivision (1) on behalf of the owner or operator.

25 b. A government agency as defined in Section 3.

26 c. A person operating an unmanned aircraft vehicle
27 or unmanned aircraft system to photograph, film, audiotape, or

1 otherwise record an image or other data for the monitoring,
2 operation, siting, development, inspection, or maintenance of
3 utilities, telecommunications, commercial mobile radio
4 service, water conveyance, or transportation infrastructure
5 for the purpose of inspecting or maintaining rights-of-way and
6 the condition, reliability, or integrity of the utility,
7 telecommunications, commercial mobile radio service, water
8 conveyance, or transportation system, or to determine if
9 repairs or additional infrastructure and associated
10 rights-of-way could be necessary.

11 d. A news organization and its employees where the
12 use is for lawful news-gathering purposes, or to cover
13 newsworthy events or events to which the general public is
14 invited.

15 (3) In addition to the criminal penalties of
16 subsection (b), a person who operates an unmanned aircraft
17 vehicle or unmanned aircraft system in a manner described in
18 subdivision (1) of this subsection may also be guilty of
19 criminal eavesdropping or criminal surveillance under Section
20 13A-11-31 or Section 13A-11-32, Code of Alabama 1975.

21 (b) (1) A person who commits the crime of unlawful
22 use of an unmanned aircraft system is guilty of a Class B
23 misdemeanor for the first offense.

24 (2) On a conviction for a second or subsequent
25 offense, the defendant is guilty of a Class A misdemeanor.

1 (3) It shall be an affirmative defense to a
2 prosecution under subsection (a) if the person did either of
3 the following:

4 a. Ensured the destruction or return of any and all
5 images, audio, video, data, copies, information, compilations,
6 reports, analyses, and any tangible and written expressions of
7 any and all information obtained through the use of the
8 unmanned aircraft system in the possession of the person and
9 any representatives.

10 b. Stopped disclosing, displaying, distributing, or
11 using the image as soon as the person knew the image was
12 captured in violation of subsection (a).

13 Section 5. (a) The owner or operator of a designated
14 facility aggrieved by the unlawful use of an unmanned aircraft
15 system, as provided in subsection (a) of Section 4, may
16 initiate a civil action against the offending party to obtain
17 all appropriate relief in order to prevent, restrain, or
18 compensate a violation of this section.

19 (b) In lieu of an award of actual damages, the owner
20 or operator of a designated facility whose photograph, image
21 or video of which was unlawfully taken may elect to recover
22 five thousand dollars (\$5,000) for each photograph, image, or
23 video that is published or otherwise disseminated, as well as
24 reasonable court costs, attorney's fees, or other injunctive
25 relief as determined by the court.

1 Section 6. (a) A government agency may not use an
2 unmanned aircraft system to gather evidence or other
3 information, except under any of the following circumstances:

4 (1) The agency first obtains a search warrant signed
5 by a judge or magistrate authorizing the use of the unmanned
6 aircraft system.

7 (2) The agency possesses reasonable suspicion that,
8 under particular circumstances, swift action is needed to do
9 any of the following:

10 a. Prevent imminent danger to life.

11 b. Forestall the imminent escape of a suspect.

12 c. Counter a high risk of a terrorist attack by a
13 specific individual or organization if the United States
14 Secretary of Homeland Security or the Secretary of the Alabama
15 State Law Enforcement Agency determines that credible
16 intelligence indicates that there is such a risk.

17 d. Counter or control fires, hazardous materials, or
18 other natural or environmental disasters that threaten life or
19 property.

20 (3) The use is for the purpose of conducting
21 surveillance in an area that is within a law enforcement
22 officer's plain view when the officer is in a location where
23 he or she is legally authorized to be.

24 (4) The use is for the purpose of conducting
25 surveillance of events or gatherings to which the general
26 public is invited on public or private land.

1 (5) The use is for the provision of continuous
2 aerial coverage when an agency is searching for a fugitive,
3 escapee, or missing person, or is monitoring a hostage
4 situation.

5 (6) The use is for the performance of search and
6 rescue operations subsequent to a declared state of emergency
7 or natural disaster.

8 (7) The use is for the documentation of a crime
9 scene or accident scene.

10 (8) The use is for any purpose over government
11 property or over private property with prior written consent.

12 (b) A person aggrieved by a violation of subsection
13 (a) may initiate a civil action against the government agency
14 in violation of subsection (a) to obtain all appropriate
15 relief to prevent or remedy the violation.

16 (c) Evidence obtained or collected in violation of
17 this section is not admissible as evidence in a criminal
18 prosecution in any state court.

19 (d) Images collected in violation of this section
20 may not be retained by the government agency.

21 Section 7. This act may not be construed to do the
22 following:

23 (1) Prohibit possession or usage of an unmanned
24 aircraft system that is authorized by federal law or
25 regulation.

26 (2) Prohibit possession or usage of an unmanned
27 aircraft system by the Alabama National Guard, the United

1 States Armed Forces, or the United States Department of
2 Defense for national defense purposes.

3 (3) Prohibit or restrict the use of an unmanned
4 aircraft system, including the gathering, collection, and
5 recording of imagery and other information, by the owner or
6 operator of a designated facility or a person under contract
7 with the owner or operator, as long as the use is in
8 furtherance of the owner or operator's business operations,
9 including, but not limited to the following:

10 a. The siting, construction, installation,
11 operation, inspection, observance, testing, maintenance,
12 repair, security, replacement, removal, and demolition of its
13 facilities, structures, equipment, and other infrastructure.

14 b. Patrolling, inspecting, observing, surveying,
15 mapping, maintaining, and securing its property, easements,
16 and rights-of-way.

17 c. Storm damage assessment, restoration, and
18 recovery.

19 Section 8. (a) The State of Alabama recognizes the
20 preemptive authority of the Federal Aviation Administration in
21 the regulation of the National Airspace in that the Federal
22 Aviation Administration is the sole regulator of the National
23 Airspace over Alabama.

24 (b) Municipal and county governments may not
25 establish a no-fly zone without prior written approval of the
26 Federal Aviation Administration.

1 (c) Nothing in this section prohibits municipal and
2 county governments from making arrests or issuing citations
3 for the violation of the criminal statutes of Alabama to an
4 unmanned aircraft system operator pilot while operating in the
5 national airspace.

6 (d) Nothing in this section prohibits municipal and
7 county governments from promulgating rules, regulations, and
8 ordinances for the use of unmanned aircraft systems operated
9 by a municipal or county government within its own boundaries.

10 Section 9. The Alabama Department of Transportation
11 may adopt rules for the implementation and administration of
12 this act.

13 Section 10. Sections 13A-6-24, 13A-6-90.1, 13A-7-22,
14 13A-10-2, 13A-10-38, 13A-11-32, and 23-1-388 are amended to
15 read as follows:

16 "§13A-6-24.

17 "(a) A person commits the crime of reckless
18 endangerment if he or she recklessly engages in conduct which
19 creates a substantial risk of serious physical injury to
20 another person.

21 "(b) Consistent with the provisions of the Alabama
22 Unmanned Aircraft Systems Act, a person who unlawfully
23 operates an unmanned aircraft system within the airspace over,
24 above, or upon the lands and waters of the state, in willful
25 or wanton disregard of the rights or safety, as defined in
26 Section 3 of the act adding this amendatory language of others

1 or in a manner so as to endanger or be likely to endanger any
2 person or property, shall be guilty of reckless endangerment.

3 "(c) Consistent with the provisions of the Alabama
4 Unmanned Aircraft Systems Act, a person who operates an
5 unmanned aircraft system near a public street, road, or
6 highway in this state, including an easement or right-of-way
7 connected to a street, road, or highway, in such a manner to
8 knowingly and willfully interfere with, or cause a hazard to,
9 a motorist, shall be guilty of reckless endangerment.

10 "(d) There is a rebuttable presumption that a person
11 operating an unmanned aircraft system without authorization,
12 regardless of altitude, directly over large groups of persons
13 who would be subject to substantial risk of serious physical
14 injury from a collision with a falling or stricken unmanned
15 aircraft system, including but not limited to concerts,
16 sporting events, parades, outdoor public assemblies, or any
17 industrial facility where there are a substantial number of
18 persons employed to work outside, constitutes reckless
19 endangerment. This statute may not be construed or interpreted
20 to regulate the national airspace controlled by the Federal
21 Aviation Administration.

22 ~~(b)~~(e) Reckless endangerment is a Class A
23 misdemeanor.

24 "§13A-6-90.1.

25 "(a) A person who, acting with an improper purpose,
26 intentionally and repeatedly follows, harasses, telephones,
27 unlawfully uses an unmanned aircraft system, as defined in

1 Section 3 of the act adding this amendatory language to
2 conduct surveillance or engage in intimidation regardless of
3 altitude, or initiates communication, verbally,
4 electronically, or otherwise, with another person, any member
5 of the other person's immediate family, or any third party
6 with whom the other person is acquainted, and causes material
7 harm to the mental or emotional health of the other person, or
8 causes such person to reasonably fear that his or her
9 employment, business, or career is threatened, and the
10 perpetrator was previously informed to cease that conduct is
11 guilty of the crime of stalking in the second degree.

12 "(b) The crime of stalking in the second degree is a
13 Class B misdemeanor.

14 "§13A-7-22.

15 "(a) A person commits the crime of criminal mischief
16 in the second degree if, with intent to damage property, and
17 having no right to do so or any reasonable ground to believe
18 that he or she has such a right, he or she inflicts damages to
19 property in an amount which exceeds five hundred dollars
20 (\$500) but does not exceed two thousand five hundred dollars
21 (\$2,500).

22 "(b) (1) Criminal mischief in the second degree is a
23 Class A misdemeanor punishable as provided by law.

24 "(2) Upon a second conviction of criminal mischief
25 in the second degree within a five-year period involving
26 damage to a church or other religious building, or damage to
27 property in a church or other religious building, the

1 defendant shall be sentenced to a mandatory minimum sentence
2 of not less than 10 days in jail and upon a third or
3 subsequent conviction of criminal mischief in the second
4 degree within a five-year period involving damage to a church
5 or other religious building, or damage to property in a church
6 or other religious building, the defendant shall be sentenced
7 to a mandatory minimum sentence of not less than 30 days in
8 jail.

9 "(3) Upon conviction for criminal mischief in the
10 second degree involving a church or other religious building
11 or damage to property in a church or other religious building,
12 the court shall order restitution as a first priority before
13 the payment of fines, court costs, or other court ordered
14 payments.

15 "(4) A person who willfully damages or destroys, by
16 any means, an unmanned aircraft system, as defined in Section
17 3 of the act adding this amendatory language, while in lawful
18 flight, is guilty of criminal mischief in the second degree.
19 The court shall order restitution for the damages to the
20 unmanned aircraft system if requested by the unmanned aircraft
21 system's owner unless the fact is established before the court
22 that the unmanned aircraft system was being used to aid in the
23 commission of a crime at the time of its destruction and the
24 operator has been convicted of an offense related therein.

25 "§13A-10-2.

26 "(a) A person commits the crime of obstructing
27 governmental operations if, by means of intimidation, physical

1 force or interference or by any other independently unlawful
2 act, he or she does any of the following:

3 "(1) Intentionally obstructs, impairs or hinders the
4 administration of law or other governmental function; ~~or.~~

5 "(2) Intentionally prevents a public servant from
6 performing a governmental function.

7 "(3) Consistent with the provisions of the Alabama
8 Unmanned Aircraft Systems Act, while piloting an unmanned
9 aircraft system, as defined in Section 3 of the act adding
10 this amendatory language, intentionally or recklessly prevents
11 an aircraft that is lawfully aiding local or state
12 governmental agencies from providing such aid due to the
13 danger of an unmanned aircraft system in close proximity to
14 the area in need of such aid based upon the reasonable
15 exercise of collision avoidance caution by the pilot of the
16 aiding aircraft.

17 "(4) Consistent with the provisions of the Alabama
18 Unmanned Aircraft Systems Act, while piloting an unmanned
19 aircraft system, as defined in Section 3 of the act adding
20 this amendatory language, uses such unmanned aircraft system
21 with the intent to alert or otherwise provide aid to others
22 engaged in the commission of a crime by providing surveillance
23 and observation of any law enforcement presence or approach,
24 or to aid in the escape or evasion from law enforcement during
25 or immediately after the commission of a criminal act.

26 "(b) This section does not apply to the obstruction,
27 impairment or hindrance of the making of an arrest.

1 "(c) Obstructing governmental operations is a Class
2 A misdemeanor.

3 "§13A-10-38.

4 "(a) A person is guilty of promoting prison
5 contraband in the third degree if the person does any of the
6 following:

7 "(1) He or she intentionally and unlawfully
8 introduces within a detention facility, or provides an inmate
9 with, any contraband or thing which the actor knows or should
10 know it is unlawful to introduce or for the inmate to possess.

11 "(2) Being a person confined in a detention
12 facility, he or she intentionally and unlawfully makes,
13 obtains, or possesses any contraband.

14 "(3) He or she intentionally introduces within a
15 state detention facility operated by the Department of
16 Corrections, or provides an inmate in a state detention
17 facility operated by the Department of Corrections with, any
18 currency or coin which the actor knows or should know is
19 unlawful to introduce or the possession of which is not
20 authorized by an inmate by the written policy of the
21 Department of Corrections.

22 "(4) Being a person in the custody of the Department
23 of Corrections, he or she obtains or possesses any currency or
24 coin, the possession of which is not authorized by the written
25 policy of the Department of Corrections.

26 "(5)a. Consistent with the provisions of the Alabama
27 Unmanned Aircraft Systems Act, knowingly and intentionally

1 operates an unmanned aircraft system, as defined in Section 3
2 by the act adding this amendatory language, on or above the
3 grounds of a municipal, county, or state correctional
4 facility.

5 "b. This subdivision shall not apply to a person
6 employed by the facility who operates the unmanned aircraft
7 system within the scope of his or her employment, or a person
8 who receives permission from the Director of the facility to
9 operate the unmanned aircraft system over the facility.

10 "c. There is a rebuttable presumption that the
11 operator of an unmanned aircraft system who knowingly flies
12 over any correctional facility without authorization is
13 willfully engaged in the promotion of prison contraband.

14 "d. Nothing in this subdivision may be interpreted
15 to regulate the National Airspace controlled by the Federal
16 Aviation Administration.

17 "(b) Promoting prison contraband in the third degree
18 is a Class B misdemeanor.

19 "(c) Any currency or coin contraband found on or in
20 the possession of any inmate in any state detention facility
21 operated by the Department of Corrections, the possession of
22 which is not authorized by the written policy of the
23 Department of Corrections, shall be confiscated and liquidated
24 after notice and a hearing as provided by departmental policy
25 and the proceeds shall be deposited in the general operating
26 fund of the department.

27 "§13A-11-32.

1 "(a) A person commits the crime of criminal
2 surveillance if he or she intentionally engages in
3 surveillance while trespassing in a private place.

4 "(1) Consistent with the provisions of the Alabama
5 Unmanned Aircraft Systems Act, trespassing in a private place
6 can be committed by the use of an unmanned aircraft system, as
7 defined in Section 3 of the act adding this amendatory
8 language, equipped with a camera, microphone, or other
9 recording device, if either of the following occur:

10 "a. The operator touches the land or any structure
11 owned by the person under observation.

12 "b. The unmanned aircraft system is observed to be
13 in unreasonably close proximity to a person while that person
14 is in a private place as defined in subdivision (2) of Section
15 13A-11-30.

16 "(2) A recording device aboard an unmanned aircraft
17 system that records a person in a private place may be seized
18 as evidence in the prosecution of this section.

19 "(b) Criminal surveillance is a Class B misdemeanor.

20 "§23-1-388.

21 "A person who operates any aircraft unmanned
22 aircraft system, as defined in the Alabama Unmanned Aircraft
23 Systems Act, within the airspace over, above, or upon the
24 lands and waters of the state, carelessly and heedlessly in
25 willful or wanton disregard of the rights or safety of others
26 or without due caution and circumspection or in a manner so as

1 to endanger or be likely to endanger any person or property,
2 shall be guilty of a Class C misdemeanor."

3 Section 11. Section 13A-11-61.4 is added to the Code
4 of Alabama 1975, to read as follows:

5 §13A-11-61.4.

6 (a) It shall be unlawful to engage in the sale,
7 transport, manufacture, possession, or operation of an
8 unmanned aircraft system that is equipped with a weapon.

9 (b) For purposes of this section, a weapon is
10 defined as an object, device, or instrument which is designed
11 to result in serious bodily injury or death, or any replica,
12 article, or device having the appearance of such an object,
13 device, or instrument.

14 (c) A violation of this section is a Class A
15 misdemeanor.

16 Section 12. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621 because the
20 bill defines a new crime or amends the definition of an
21 existing crime.

22 Section 13. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.