

**NetChoice** *Promoting Convenience, Choice, and Commerce on The Net*

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February 5, 2018

Sen. Brian T. Taniguchi, Chair  
Sen. Rosalyn H. Baker, Chair  
Conference Room 229  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

RE: **Opposition to SB 2160 – Relating to Unmanned Aerial Vehicles.**

Dear Chairs Taniguchi and Baker and members of the Committee,

We ask you not to advance SB 2160.

We agree with the intent to install reasonable regulations regarding the use of drones. However, SB 2160 creates unintended consequences to legitimate personal and commercial uses of drones.

Drones hold tremendous promise for businesses, professionals, and hobbyists. In areas like real estate, security, agriculture, architecture, engineering, and delivery, drones can provide significant commercial benefits to consumers and businesses in both rural and urban areas.

However, passing SB 2160 would prevent Hawaii residents from exploring many of these opportunities.

For example, SB 2160 would limit the ability of:

- Realtors using a drone to take pictures of a home.
- Farmers using a drone to monitor their crops.
- News media and film makers using a drone to record events.
- Wedding photographers using a drone to capture important family moments.

SB 2160 lacks the appropriate scienter for operation of drones, includes overly broad definitions and limitations, and lacks necessary exceptions for emergency safety situations where a drone must enter private property.

Take, for example, SB 2160's limitation of flight within 25 feet of "any overhead cable." This would ground drone operation in Hawaii citizens' own backyards.

Likewise, we would consider it absurd to outlaw picture taking on a public street. But SB 2160 forbids such practices if that camera is connected to a drone. SB 2160's overly broad definition of personal information and lack of appropriate mens rea essentially makes illegal the flying of a drone with a camera in public unless the operator first obtains express written consent of everyone in view. This limitation is not only unreasonable, but it violates constitutional protections of free speech.

There are concerns about over-penalization as SB 2160 holds operators strictly liable for flying over another's property, even if the operator had no reason to know that the property was private.

Many other concerns about passing SB 2160 exist. Fortunately, Hawaii has existing laws that already protect the privacy and safety of residents.

Hawaii's existing laws addressing invasion of privacy,<sup>1</sup> spying,<sup>2</sup> trespass,<sup>3</sup> and interference with first-responders<sup>4</sup> are already fully applicable to the use of drones in Hawaii.

Regarding flight restrictions, the US Department of Transportation already provides many limitations on drone operation such as height restrictions.

Instead of passing SB 2160 we suggest amending it to create clear rules for drone operators. We suggest replacing the existing bill text with the "Unmanned Aircraft Systems Act" (UASA) based on existing Michigan Law ([SB 992](#) 2016).

The UASA, available at [NetChoice.org/DroneModel](http://NetChoice.org/DroneModel), enables the safe and lawful operation of drones by promoting accountability of operators, protecting privacy and property rights, and prescribing penalties for interference with first responders.

The UASA:

- Creates statewide standard allowing clarity for individuals and government.
- Recognizes licensing by FAA.
- Prohibits using a UAS to knowingly and intentionally:
  - Interfere with the official duties of first responders.
  - Harass, stalk, or violate restraining orders.
  - Recording an individual in a manner that invades the individual's reasonable expectation of privacy.
- Creates a process to register locations as critical infrastructure.

While we ask that you not adopt SB 2160, we welcome the opportunity to work with you on reasonable regulations that allow all to prosper.

Sincerely,



Carl Szabo

Vice President and General Counsel, NetChoice

*NetChoice is a trade association of e-Commerce and online businesses.* [www.netchoice.org](http://www.netchoice.org)

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<sup>1</sup> HI Rev. Stat. § 711-1110.9

<sup>2</sup> *Id.* § 711-1111

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 710-1026