COMMITTEE REPORT

May 30, 2013

**H. 3514**

Introduced by Reps. Hamilton, Delleney, Taylor and Putnam

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Read the first time February 7, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3514) to amend the Code of Laws of South Carolina, 1976, by adding Section 17-13-180 so as to define necessary terms, prohibit the operation of a public, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting Section 17-13-180(N), as contained in SECTION 1, page 9, and inserting:

/ (N) It is unlawful to operate an unmanned aircraft for the purpose, in whole or in part, of using the public unmanned aircraft system as a weapon or to deliver a weapon against a person or property and this action is punishable pursuant to the provisions of Article 7, Chapter 23, Title 16. /

Amend the bill further, Section 17-13-180, as contained in SECTION 1, by adding an appropriately lettered subsection at the end to read:

/( ) Nothing in this section creates any liability for a manufacturer of an unmanned aircraft system, as defined in subsection (A)(13), when an agency, as defined in subsection (A)(1), is found to be in violation by a court of competent jurisdiction, as defined in subsection (A)(3), of the provisions of this section. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17-13-180 SO AS TO DEFINE NECESSARY TERMS, PROHIBIT THE OPERATION OF A PUBLIC UNMANNED AIRCRAFT SYSTEM AND THE DISCLOSURE OF PERSONAL INFORMATION ACQUIRED THROUGH THE OPERATION OF A PUBLIC UNMANNED AIRCRAFT SYSTEM, TO PROVIDE PENALTIES FOR VIOLATIONS, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 13, Title 17 of the 1976 Code is amended by adding:

“Section 17-13-180. (A) As used in this section, the term:

(1) ‘Agency’ means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the State or of a unit of local government including counties, cities, towns, regional governments, and the departments of them, and includes constitutional officers, except as otherwise expressly provided by law. ‘Agency’ also means each component part of the legislative, executive, or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. The term also includes any entity, whether public or private, with which any of these entities has entered into a contractual relationship for the operation of a system of personal information to accomplish an agency function.

(2) ‘Biometric identification system’ means a system that collects unique physical and behavioral characteristics including, but not limited to, biographical data, facial photographs, fingerprints, and iris scans to identify individuals.

(3) ‘Court of competent jurisdiction’ means a district court of the United States or the United States Court of Appeals that has jurisdiction over the offense being investigated and is in a district in which the public unmanned aircraft will conduct a search or a court of general jurisdiction authorized by the State to issue search warrants.

(4) ‘Inspection warrant’ means an order in writing, made in the name of the State, signed by a judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, testing, or collection of samples for testing required or authorized by state or local law or regulation.

(5) ‘Judicial officer’ means a judge, magistrate, or other person authorized to issue a criminal, inspection, or administrative search warrant.

(6) ‘Law enforcement officer’ means as defined in Section 23-23-10.

(7) ‘Person’ means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity and any successor, representative, agent, agency, or instrumentality of the entity.

(8) ‘Personal information’ means all information that:

(a) describes, locates, or indexes anything about a person including, but not limited to, his social security number, driver’s license number, agency‑issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, or criminal or employment record;

(b) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to a person, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution; or

(c) describes, locates, or indexes anything about a person including, but not limited to, intellectual property, trade secrets, proprietary information, or operational information.

(9) ‘Public unmanned aircraft system’ means an unmanned aircraft and associated elements, including communications links, sensing devices, and the components that control the unmanned aircraft, operated by an agency or at the direction of or under the control of an agency.

(10) ‘Sensing device’ means a device capable of acquiring data or information from its surroundings, including, but not limited to, cameras using visible, ultraviolet, or infrared frequencies, microphones, thermal detectors, chemical detectors, radiation gauges, and wireless receivers in any frequency.

(11) ‘Trade secrets’ means all forms and types of financial, business, scientific, technical, economic or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing, which the owner has taken reasonable measures to protect and has an independent economic value.

(12) ‘Unmanned aircraft’ means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

(13) ‘Unmanned aircraft system’ means an unmanned aircraft and associated elements, including communication links and components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(14) ‘Weapon’ means lethal and nonlethal weapons.

(B) Except as otherwise specifically authorized in this section, it is unlawful to operate a public unmanned aircraft system or disclose personal information about a person acquired through the operation of a public unmanned aircraft system.

(C) A state agency or organization having jurisdiction over criminal law enforcement or regulatory violations including, but not limited to, the State Law Enforcement Division and Department of Public Safety, may not procure a public unmanned aircraft system without the approval of the General Assembly. A department of law enforcement of any city, county, or town or a local agency having jurisdiction over criminal law enforcement or regulatory violations may not procure a public unmanned aircraft system without the approval of the governing body of the locality.

(D) All operations of a public unmanned aircraft system or disclosure of personal information about a person acquired through the operation of a public unmanned aircraft system must be conducted in a manner that minimizes the collection and disclosure of personal information not authorized pursuant to this section.

(E) A public unmanned aircraft system may be operated and personal information from the operation disclosed in order to collect personal information only pursuant to a criminal warrant issued by a court of competent jurisdiction or as otherwise provided in this section.

(1) Each petition for a search warrant from a judicial officer to permit the use of a public unmanned aircraft system and personal information collected from the operation must be made in writing, upon oath or affirmation, to a judicial officer in a court of competent jurisdiction for the circuit in which a public unmanned aircraft system is to be operated or where there is probable cause to believe the offense for which the public unmanned aircraft system is sought has been committed, is being committed, or will be committed.

(2) The law enforcement officer shall submit an affidavit that may be filed electronically by facsimile process or electronic record and must include:

(a) the identity of the applicant and the identity of the agency conducting the investigation;

(b) the identity of the individual and jurisdictional area for which use of the public unmanned aircraft is being sought;

(c) specific and articulable facts demonstrating probable cause to believe that there is criminal activity and that the operation of the public unmanned aircraft system will uncover evidence of the activity or facts to support the finding that there is probable cause for issuance of an administrative search warrant pursuant to applicable requirements provided by law; and

(d) the name of the county or city where there is probable cause to believe the offense for which use of the unmanned public aircraft system is sought has been committed, is being committed, or will be committed.

(3) If the judicial officer finds, based on the affidavit submitted, that there is probable cause to believe that a crime has been committed, is being committed, or will be committed and that there is probable cause to believe the personal information likely to be obtained from the use of the public unmanned aircraft system will be evidence of the commission of the offense, the judicial officer may issue a search warrant authorizing the use of the public unmanned aircraft system. The search warrant must authorize the collection of personal information contained in or obtained from the public unmanned aircraft system but may not authorize the use of a biometric identification system.

(4) Warrants may not be issued for a period greater than forty-eight hours. Extensions may be granted but may be no longer than the authorizing judicial officer considers necessary to achieve the purposes for which it was granted and in no event for longer than thirty days.

(5) Within ten days of the execution of a search warrant, the officer executing the warrant must serve a copy of the warrant upon the person or persons upon whom personal information was collected except notice may be delayed pursuant to the provisions of subsection (F).

(F) A governmental entity acting pursuant to the provisions of this section, when a warrant is sought, may include in the petition a request, which the court shall grant, for an order delaying the notification required pursuant to the provisions of subsection (E)(5) for a period not to exceed ninety days if the court determines that there is a reason to believe that notification of the existence of the warrant may have an adverse result.

(1) An adverse result for the purposes of this section is:

(a) placing the life or physical safety of an individual in danger;

(b) causing a person to flee from prosecution;

(c) causing the destruction of or tampering with evidence;

(d) causing the intimidation of potential witnesses; or

(e) jeopardizing an investigation or unduly delaying a trial.

(2) The governmental entity shall maintain a copy of certification.

(3) Extension of the delay of notification of up to ninety days each may be granted by the court upon application or by certification by a governmental entity.

(4) Upon expiration of the period of delay of notification pursuant to item (1) or (3), the governmental entity shall serve a copy of the warrant upon, or deliver it by registered or first‑class mail to, the person upon whom personal information was collected together with notice that:

(a) states with reasonable specificity the nature of the law enforcement inquiry; and

(b) informs the person upon whom personal information was collected:

(i) that notification was delayed;

(ii) the governmental entity or court that made the certification or determination pursuant to which that delay was made; and

(iii) the provision of this section allowed the delay.

(G) It is lawful pursuant to this section for a law enforcement officer or other public official to operate a public unmanned aircraft system and disclose personal information from the operation if:

(1) the officer reasonably determines that an emergency situation exists that involves immediate danger of death or serious physical injury to a person and:

(a) requires operation of a public unmanned aircraft system before a warrant authorizing the interception can, with due diligence, be obtained;

(b) there are grounds upon which a warrant could be entered to authorize the operation; and

(c) an application for a warrant providing the operation is made within forty-eight hours after the operation has occurred or begins to occur;

(2) in the absence of a warrant, an operation of a public unmanned aircraft system carried out pursuant to this subsection immediately shall terminate when the personal information sought is obtained or when the application for the warrant is denied, whichever is earlier;

(3) in the event the application for approval is denied, the personal information obtained from the operation of a device must be treated as having been obtained in violation of this section and an inventory must be served on the person named in the application.

(H) A public unmanned aircraft system may be operated and personal information from the operation disclosed in order to collect information pursuant to an administrative search warrant or inspection warrant issued by a court of competent jurisdiction by a judicial officer having authority to issue the warrant whose territorial jurisdiction encompasses the area to be inspected or entered or as otherwise provided in this section.

(1) Each petition for a warrant from a judicial officer to permit the use of a public unmanned aircraft system and information collected from the operation must be made in writing, upon oath or affirmation, to a judicial officer in a court of competent jurisdiction for the circuit in which a public unmanned aircraft system is to be operated or where there is probable cause, supported by affidavit, particularly describing the place, property, things, or persons to be inspected, tested, or information collected and the purpose for which the inspection, testing, or collection of information is to be made.

(2) Probable cause is deemed to exist if either:

(a) reasonable legislative or administrative standards for conducting the inspection, testing, or information collected are satisfied with respect to the particular place, property, thing, or person; or

(b) there is cause to believe that there is a condition, object, activity, or circumstance that legally justifies the inspection, testing, or collection of information.

(3) The agency official shall submit an affidavit that may be filed electronically by:

(a) facsimile process; or

(b) other electronic record and shall include the identity of the applicant and the identity of the agency conducting the inspection.

(4) The supporting affidavit shall contain either a statement that consent to the search and collection of information has been sought and refused or facts or circumstances reasonably justifying the failure to seek consent in order to enforce effectively the safety and health laws, regulations or standards of the warrant based on legislative or administrative standards for inspection.

(5) The affidavit must contain factual allegations sufficient to justify an independent determination by a judge that the search is based on reasonable standards and the standards are being applied to a particular area in a neutral and fair manner.

(6) The issuing judicial officer may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

(7) A warrant issued is effective for the time specified in the warrant, but not for a period of more than fifteen days unless extended or renewed by the judicial officer who signed and issued the original warrant. The warrant must be executed and must be returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return must list the information collected pursuant to the warrant. After the expiration of the time, the warrant, unless executed, is void.

(8) A warrant may not be executed in the absence of the owner, tenant, operator, or custodian of the premises unless the issuing judicial official specifically authorizes that the authority is reasonably necessary to affect the purposes of the law or regulation. Entry pursuant to a warrant may not be made forcibly. The issuing officer may authorize a forcible entry when the facts:

(a) create a reasonable suspicion of immediate threat to the health or safety of persons or to the environment; or

(b) establish that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant must be issued jointly to the applicant agency and a law enforcement officer shall accompany the agency official during the execution of the warrant.

(9) No court of the State has jurisdiction to hear a challenge to the warrant before its return to the issuing judicial officer, except as a defense in a contempt proceeding or if the owner or custodian of the place to be inspected submits a substantial preliminary showing by affidavit and accompanied by proof that:

(a) a statement included by the affiant in his affidavit for the administrative search warrant was false and made knowingly and intentionally or with reckless disregard for the truth; and

(b) the false statement was necessary to the finding of probable cause. The court may conduct in camera review as appropriate.

(10) After the warrant is executed and returned to the issuing judicial officer, the validity of the warrant may be reviewed either as a defense to a Notice of Violation or by declaratory judgment action brought in a circuit court. The review is confined to the face of the warrant, affidavits, and supporting materials presented to the issuing judicial officer. If the owner or custodian of the place inspected submits a substantial showing by affidavit and accompanied by proof that:

(a) a statement included in the warrant was false and made knowingly and intentionally or with reckless disregard for the truth; and

(b) the false statement was necessary to the finding of probable cause, the reviewing court shall limit its inquiry to whether there is substantial evidence in the record supporting the issuance of the warrant and may conduct a de novo determination of probable cause.

(I) It is lawful pursuant to this section for a public institution of higher education to operate a public unmanned aircraft system solely for research or academic purposes provided that no part of personal information and no evidence derived from the operation may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State or a political subdivision of the State.

(J) When personal information from a public unmanned aircraft system has been acquired, no part of the personal information and no evidence derived from it may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State or a political subdivision of the State if the collection or disclosure of that personal information would be in violation of this section.

(K) No personal information collected on an individual or area other than the target that justified the issuance of a search warrant may be used, copied, or disclosed for any purpose. Personal information must be deleted as soon as possible, and in no event later than twenty-four hours after collection.

(L) Personal information collected on an individual or area specified in the warrant must be deleted within thirty days unless there is a reasonable belief that the personal information is evidence of criminal activity or civil liability related to the reason that allowed the use of the public unmanned aircraft system.

(M) The disclosure or publication, without authorization of a circuit court, by a court officer, law enforcement officer, or other person responsible for the administration of this section of the existence of a search warrant issued pursuant to this section, application for the search warrant, an affidavit filed in support of the warrant, or personal information obtained as a result of the search warrant is a misdemeanor punishable, upon conviction, by a fine of not less than one thousand dollars or imprisonment for not less than one year.

(N) It is unlawful to operate an unmanned aircraft for the purpose, in whole or in part, of using the public unmanned aircraft system as a weapon or to deliver a weapon against a person or property or to manufacture, sell, or distribute a public unmanned aircraft system as a weapon or to deliver a weapon against a person or property and this action is punishable pursuant to the provisions of Article 7, Chapter 23, Title 16.

(O) The use of public unmanned aircraft systems shall fully comply with all Federal Aviation Administration requirements and guidelines.

(P) By July first of each year, a judicial officer who has authorized the issuance of a search warrant or extension of a public unmanned aircraft system that expired during the preceding year or who has denied approval during that year shall report to the Chief Justice of the Supreme Court or his designee the following information, the:

(1) fact that a warrant or extension was applied for;

(2) kind of warrant or extension applied for;

(3) fact that the warrant or extension was granted as applied for, was modified, or was denied;

(4) period of interceptions authorized by the order, and the number and duration of any extensions of the order;

(5) offense or purpose specified in the petition and the probable cause giving rise to the warrant or extension of the warrant; and

(6) identity of the applying state agency applicant or law enforcement officer, the agency making the application, and the judicial officer authorizing the petition.

(Q) By July first of each year, a law enforcement agency who applied for a criminal search warrant for the use of a public unmanned aircraft system shall report to the director of SLED or his designee the following information, the:

(1) information required by subsection (P)(1) through (6) with respect to each application for a search warrant or extension made during the preceding calendar year;

(2) general description of the information gathered under the search warrant or extension including the:

(a) approximate nature and frequency of incriminating conduct gathered;

(b) approximate number of persons upon whom information was gathered; and

(c) approximate nature, amount, and cost of the manpower and other resources used in the collection;

(3) number of arrests resulting from information gathered under the search warrant or extension and the offenses for which arrests were made;

(4) number of trials resulting from such information;

(5) number of motions to suppress made with respect to such information and the number granted or denied;

(6) number of convictions resulting from such information and the offenses for which the convictions were obtained and a general assessment of the importance of the information; and

(7) information required by subsection (P)(1) through (6) with respect to search warrants or extensions obtained in the preceding calendar year.

(R) By July first of each year, each state agency of the State who applied for an administrative search warrant or inspection warrant or extension of a public unmanned aircraft system shall report to the Governor or his designee the following information:

(1) fact that such a warrant or extension was applied for;

(2) kind of order or extension applied for;

(3) fact that the order or extension was granted as applied for, was modified, or denied;

(4) period of interceptions authorized by the order and the number and duration of any extensions of the order;

(5) identity of the applicant and state agency making the petition and the judicial officer authorizing the petition;

(6) probable cause giving rise to the issuance of the administrative search warrant or inspection warrant in the petition or extension of such warrant, including the conditions, object, activity, or circumstance that legally justified such inspection, testing, or collection of information;

(7) general description of the information gathered under such warrant or extension, including the:

(a) approximate nature and frequency of the information gathered, collected, or inspected from such place, property, things, or persons;

(b) approximate number of persons upon whom personal information was gathered; and

(c) approximate nature, amount, and cost of the manpower and other resources used in the collection or inspection; (8) if applicable, the identity of the judicial officer authorizing forcible entry, the identity of the law enforcement officer who assisted the agency official, and information justifying the issuance of the forcible entry order.

(S) By December first of each year, the Chief Justice of the Supreme Court or his designee, the director of SLED or his designee, and the Governor or his designee shall transmit to the General Assembly a full and complete report concerning the number of applications for search warrants authorizing or approving operation of a public unmanned aircraft system or disclosure of information or date from the operation of a public unmanned aircraft system pursuant to this section and the number of search warrants and extensions granted or denied pursuant to this section during the preceding calendar year. This report must include a summary and analysis of all the data required to be filed with the Supreme Court, SLED, and the Governor.

(T) Excluding personally identifiable information, records required by subsections (P), (Q), and (R) must be open to public disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act.

(U) The governing body of any locality permitting the use of public unmanned aircraft systems shall publish publicly available written policies and procedures for the use of public unmanned aircraft systems by the law enforcement agencies of the locality.

(V) The governing body of any locality permitting the use of public unmanned aircraft systems, by ordinance, shall require the law enforcement agency of the locality operating a public unmanned aircraft system to maintain records of each use of a public unmanned aircraft system, including the date, time, location of use, target of data collection, type of data collected, the justification for the use, the operator of the public unmanned aircraft system, and the person who authorized the use.

(W) The governing body of a locality permitting the use of a public unmanned aircraft system shall conduct an annual comprehensive audit on the operation of all public unmanned aircraft systems, including the law enforcement log book, corresponding emergency telephone calls, warrants, and other documentation of the justification for use and data collected. The audit must be publically available. The audit must include:

(1) the number of uses of a public unmanned aircraft system organized by types of incidents and types of justification for use;

(2) the number of crime investigations aided by the use and how the use was helpful to the investigation;

(3) the number of uses of a public unmanned aircraft system for reasons other than criminal investigations and how the use was helpful;

(4) the frequency and type of data collected for individuals or areas other than targets;

(5) the total cost of the public unmanned aircraft system; and

(6) additional information and analysis the governing body considers useful.

(X) The governing body of a locality permitting the use of a public unmanned aircraft system, upon completion of the publicly available annual audit on the use of public unmanned aircraft systems, shall review the use of public unmanned aircraft systems and consider both the benefits and risks to privacy before authorizing the continued operation of a public unmanned aircraft system in such locality.”

SECTION 2. This act takes effect upon approval by the Governor.

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