

## HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	House File 572 (formerly HF 388)	House Committee:	<b>PASSED</b> 2/28/2023	<b>13-10</b>
Committee:	Agriculture	House Floor:	<b>PASSED</b> 4/11/2023	<b>87-10</b>
Floor Manager:	Rep. Wulf	Senate Floor:		
Date:	April 11, 2023	Governor:		
Staff:	Lew Olson (1-3096)			

### Intrusion, Surveillance by Remote Piloted Aircraft

**House File** 572 proposes to create a new Code chapter (715D) to prohibit the use of remotely piloted aircraft (RPA) flying over a homestead or that part of a secured farmstead area where agricultural animals are kept. The floor manager has both a first-degree and second-degree amendments that in concert will substantially rewrite the bill with similar, but augmented language that clarify exemptions.

- The bill as drafted creates two related criminal offenses—
  - A person commits ‘intrusion’ by use of a RPA by knowingly controlling the flight or an RPA over a homestead or secure farmstead area, and
  - A person commits ‘surveillance’ by the use of a RPA equipped with a surveillance device over a homestead or secure farmstead area.
- The penalty for intrusion by a RPA is a simple misdemeanor, and for surveillance by a RPA is a serious misdemeanor.
- Injunctive relief may be granted to a petitioner to district court to prevent a respondent from using a RPA to harass a petitioner by intruding or surveilling a homestead or secured farmstead if shown by a preponderance of evidence. Such relief may be up to two years, and courts may grant petitioner court costs, reasonable attorney fees, and related expenses related to petitioners’ investigations and adjudication of the case, which shall be taxed as part of the cost of the action.
- This chapter does not apply-
  - if a person operating the RPA acts with the consent of the owner of homestead or secured farmstead,
  - The RPA is operated—
    - by a public utility,
    - by various levels of government (federal, state, local, or interstate compact or agreement) secures,
    - is operated above 400 feet above the surface of the earth in that location, or
    - for the exclusive purpose of collecting information regarding weather or climate conditions.

**Fiscal Note** A fiscal note for HF 572 was issued on March 13, 2023 and states —‘...HF 572 establishes new offenses, and the fiscal impact cannot be estimated due to a lack of existing conviction data.’

### Section by Section Analysis

#### Section 1—(New) Code Chapter 715D

Creates new section **715D.1** that specifies pertinent definitions for this new Code chapter which include: ‘Agricultural animal’, ‘Convicted’, ‘Homestead’, ‘Remotely piloted aircraft’ ‘Secured Farmstead area, and ‘Surveillance device’.

Section 2—Intrusion by RPA Offense

Creates new section **715D.2** that specifies the circumstance when a person intrudes with a RPA over a homestead or secured farmstead. This is by using a RPA to knowingly fly over and within 400-feet of a homestead or secured farmstead owners’ property and under 400-feet above the surface without consent. This protective bubble doesn’t extend beyond the homestead/farmstead owners’/occupants’ property line. The first offense is a simple misdemeanor and can escalate to a serious misdemeanor with subsequent violations or with a prior surveillance offense.

Section 3—Surveillance by RPA Offense

Creates new section **715D.3** that specifies the circumstance when a person commits surveillances with a RPA over a homestead or secured farmstead. This is by using a RPA equipped with a surveillance device which knowingly flies over and within 400-feet of a homestead or secured farmstead owners’ property and under 400-feet above the surface without consent. This protective bubble doesn’t extend beyond the homestead/farmstead owners’/occupants’ property line. The first surveillance offense is a serious misdemeanor and can escalate to an aggravated misdemeanor with subsequent violations or with a prior intrusion offense.

Section 4—Injunctive Relief for Harassment with a RPA

Creates new section **715D.4** that provides for injunctive relief for harassment may be granted to a petitioner by a district court to prevent a respondent from using a RPA to harass a petitioner by intruding or surveilling a homestead or secured farmstead if shown by a preponderance of evidence. Such relief may be up to two years, and courts may grant petitioner court costs, reasonable attorney fees, and related expenses related to petitioners’ investigations and adjudication of the case, which shall be taxed as part of the cost of the action.

Section 5—Exceptions

Creates new section **715D.5** that specifies exceptions to intrusion or surveillance is any of the following apply—

- a person acts with the consent of the owner of a homestead or farmstead,
- The RPA is operated—
  - by a public utility,
  - by various levels of government (federal, state, local, or interstate compact or agreement) secures,
  - is operated above 400 feet above the surface of the earth in that location, or
  - for the exclusive purpose of collecting information regarding weather or climate conditions.

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## Amendment Analysis

**H 1147**, by Wulf, proposes to make some changes to the bill to add railroads as an exempt entity that may surveille and record along its property (actions 1 and 10; with actions 2-4 and 11-12 are technical renumbering to reflect addition of railroad definition and exemption) and other verbiage changes to clarify aspects of the bill.

- Actions 5 and 6 provides language to excuse accidental intrusions that do not linger over protected areas,
- action 7 adds qualifying language concerning ‘knowingly’ to specify—‘... *intent to commit a public offense.*’
- Action 8 provide new verbiage concerning the Court may order a person holding an impermissible retrievable image, sound or recording to destroy such and any copy of it. Alternatively, a person with an ownership interest in the impermissible recording may claim if they are: (a) are the person, or parent, or guardian of the person in the image/recording; (b) own the agricultural animals, or (c) own the land or improvement.

- Action 9 strikes verbiage in the bill exempting person who have permission of the person or owner being recorded and replaces it with language that explicitly allows the operation of RPA for commercial or agricultural use that is in compliance with federal aviation administration regulation, authorization, or exemption.

H 1147 as amended was **ADOPTED** on a voice vote.

**H 1201** by Wulf, proposes to both truncate H 1147, by striking actions one thru nine and leaving actions 10-12 to permit operation of H 1159; and amending the bill itself to substantially rewrite the bill with similar but slightly different verbiage. The changes include:

- adding additional definitions to the bill to include:
  - ‘Animal feeding operations’ which includes both confinements and open feedlots;
  - ‘Principal residence’;
  - ‘Railroad company’;
- adding language to certain definitions that are locations to denote the bill does not apply—
  - to locations that are within the corporate limits of a city or
  - to a person flying a RPA over their own property even if it is within 400-feet of a homestead or secure farmstead.
- adding a new section concerning distance measure language (proposed Code section **715D.2**),
- renumbering of ensuing sections of the bill displaced by the new section (715.2-715.6) with slightly changed verbiage with the most notable being the addition/retention of verbiage that was action 8 of H 1147 concerning injunctive relief,
- modifying of the exception section concerning intrusion and surveillance to explicitly specify those Code sections.
- Adding an explicit exemption for state government or governmental subdivision exercising right to a public road right-of-way as defined in Code section 306.3.

H-1198 was **ADOPTED** on a voice vote.

**H 1159**, by Gjerde, proposes to amend H 1147, to strike action 9 and 10 and an aspect of the bill (page 3, line 34 through page 4 line 5) and replace that language it with comparable language that does not strike the permission language and make technical correction to reflect such change. H 1159 was **ADOPTED** on a voice vote.