

HB1429 Testimony – House Agriculture Committee – Clint Fleckenstein

Mr. Chairman and members of the Committee, my name is Clint Fleckenstein. I'm testifying as a constituent, a Bismarck-Mandan resident, and a UAS operator. I've been using "drones" since 2015. I have held a current FAA Part 107 certificate since 2017, and I fly recreationally, too. I urge you to vote Do Not Pass on this bill, HB1429.

For starters, this bill shouldn't even exist: the Federal Aviation Administration has sole jurisdiction over the National Airspace (NAS). HB1429 contradicts federal aviation law and would therefore be subject to preemption as soon as it passes. This bill is a thinly veiled attempt to usurp the FAA's authority: the exception for operations "over 400 feet" belies the bill's aim to ban UAS traffic over every home and farm. Other states and jurisdictions, even universities, have tried to do this sort of thing, and they find out that regulation of the NAS is under the sole purview of the FAA. Enough states have tried this – unsuccessfully – that the FAA has actually published a Fact Sheet about it.

Second, this bill essentially criminalizes legal operation of unmanned aerial systems. It attempts to make it illegal to fly in any neighborhood in North Dakota by banning flights over all homesteads (i.e., every primary residence in the state). If HB1429 passes, any person flying legally according to federal aviation law in his or her own neighborhood could be subject to 30 days in jail – a year, if they do it twice – and fines up to \$3,000.

Third, this bill is vague and subjective...and vague law is bad law: difficult, if not impossible, to enforce, and costly in time and money as people find themselves in court trying to make sense of it.

- Who determines what is a "reasonable" commercial or agricultural purpose?
- What's a "secure farmstead", and how does it differ from any other farmstead?
- What about use of UAS by volunteer search and rescue organizations? No exemption.
- What about research or education? No exemptions here, either.
- Who determines whether an aircraft "remains over the homestead"? Is that for thirty seconds? Ten minutes? Half an hour?

Finally, the behavior this legislation *seems* to intend to address is already addressed in Century Code. Voyeurism is addressed in Title 36 under "surreptitious intrusion". Harassment of livestock is covered in Title 39. But this bill doesn't even attempt to address such behavior; it simply goes after the drone pilots for lawful use of technology.

Consider this illustration: what if we suddenly had an epidemic of people standing on sidewalks, taking photos through people's windows with telephoto cameras...would it make sense to criminalize walking down the sidewalk with a camera? Or to pass a law saying people can walk down the sidewalk with a camera, but they can't stop for an unspecified amount of time? No, in this case the prudent approach would be to pass a law addressing the behavior, taking pictures through people's windows with a zoom lens, or apply the laws already on the books regarding such an act.

The National Airspace is, according to federal law, a public space, just like that sidewalk, and state or local laws which infringe upon the lawful use of that public space will be preempted by federal law as they attempt to punish lawful UAS operators instead of addressing actual criminal behavior.

Finally, North Dakota is a state which strives to be the most UAS-friendly state in the country, promoting its vast amounts of wide-open airspace to attract world-class partners in aerospace education and innovation. This bill contradicts that objective, and it deserves a Do Not Pass from your committee. Thank you for your time and consideration.

Respectfully,

Clint Fleckenstein