

HB 649

2015

1 A bill to be entitled

2 An act relating to surveillance by a drone; amending
3 s. 934.50, F.S.; defining terms; prohibiting a person,
4 state agency, or political subdivision from using a
5 drone to capture an image of privately owned or
6 occupied real property or of the owner, tenant, or
7 occupant of such property with the intent to conduct
8 surveillance without his or her written consent if a
9 reasonable expectation of privacy exists; specifying
10 when a reasonable expectation of privacy may be
11 presumed; providing that the owner, tenant, or
12 occupant may initiate a civil action for compensatory
13 damages or seek injunctive relief against a violator;
14 providing for the recovery of attorney fees and
15 punitive damages; specifying that remedies provided by
16 the act are cumulative to other existing remedies;
17 providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 934.50, Florida Statutes, is amended to
22 read:

23 934.50 Searches and seizure using a drone.—

24 (1) SHORT TITLE.—This act may be cited as the "Freedom
25 from Unwarranted Surveillance Act."

26 (2) DEFINITIONS.—As used in this act, the term:

27 (a) "Drone" means a powered, aerial vehicle that:
 28 1. Does not carry a human operator;
 29 2. Uses aerodynamic forces to provide vehicle lift;
 30 3. Can fly autonomously or be piloted remotely;
 31 4. Can be expendable or recoverable; and
 32 5. Can carry a lethal or nonlethal payload.

33 (b) "Image" means a record of thermal, infrared,
 34 ultraviolet, visible light, or other electromagnetic waves;
 35 sound waves; odors; or other physical phenomena which captures
 36 conditions existing on or about real property or an individual
 37 located on that property.

38 (c) "Imaging device" means a mechanical, digital, or
 39 electronic viewing device; still camera; camcorder; motion
 40 picture camera; or any other instrument, equipment, or format
 41 capable of recording, storing, or transmitting an image.

42 (d) ~~(b)~~ "Law enforcement agency" means a lawfully
 43 established state or local public agency that is responsible for
 44 the prevention and detection of crime, local government code
 45 enforcement, and the enforcement of penal, traffic, regulatory,
 46 game, or controlled substance laws.

47 (3) PROHIBITED USE OF DRONES.—

48 (a) A law enforcement agency may not use a drone to gather
 49 evidence or other information.

50 (b) A person, a state agency, or a political subdivision
 51 as defined in s. 11.45 may not use a drone equipped with an
 52 imaging device to record an image of privately owned or occupied

53 real property or of the owner, tenant, or occupant of such
54 property with the intent to conduct surveillance on the
55 individual or property captured in the image in violation of
56 such person's reasonable expectation of privacy without his or
57 her written consent. For purposes of this section, a person is
58 presumed to have a reasonable expectation of privacy on his or
59 her privately owned or occupied real property if he or she is
60 not observable by persons located at ground level in a place
61 where they have a legal right to be, regardless of whether he or
62 she is observable from the air with the use of a drone.

63 (4) EXCEPTIONS.—This act does not prohibit the use of a
64 drone:

65 (a) To counter a high risk of a terrorist attack by a
66 specific individual or organization if the United States
67 Secretary of Homeland Security determines that credible
68 intelligence indicates that there is such a risk.

69 (b) If the law enforcement agency first obtains a search
70 warrant signed by a judge authorizing the use of a drone.

71 (c) If the law enforcement agency possesses reasonable
72 suspicion that, under particular circumstances, swift action is
73 needed to prevent imminent danger to life or serious damage to
74 property, to forestall the imminent escape of a suspect or the
75 destruction of evidence, or to achieve purposes including, but
76 not limited to, facilitating the search for a missing person.

77 (5) REMEDIES FOR VIOLATION.—

78 (a) An aggrieved party may initiate a civil action against

79 a law enforcement agency to obtain all appropriate relief in
 80 order to prevent or remedy a violation of this act.

81 (b) The owner, tenant, or occupant of privately owned or
 82 occupied real property may initiate a civil action for
 83 compensatory damages for violations of this section and may seek
 84 injunctive relief to prevent future violations of this section
 85 against a person, state agency, or political subdivision that
 86 violates paragraph (3) (b). In such action, the prevailing party
 87 is entitled to recover reasonable attorney fees from the
 88 nonprevailing party based on the actual and reasonable time
 89 expended by his or her attorney billed at an appropriate hourly
 90 rate and, in cases in which the payment of such a fee is
 91 contingent on the outcome, without a multiplier, unless the
 92 action is tried to verdict, in which case a multiplier of up to
 93 twice the actual value of the time expended may be awarded in
 94 the discretion of the trial court.

95 (c) Punitive damages under this section may be sought
 96 against a person subject to other requirements and limitations
 97 of law, including, but not limited to, part II of chapter 768
 98 and case law.

99 (d) The remedies provided by this section are cumulative
 100 to other existing remedies.

101 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 102 collected in violation of this act is not admissible as evidence
 103 in a criminal prosecution in any court of law in this state.

104 Section 2. This act shall take effect July 1, 2015.