

By the Committees on Appropriations; and Judiciary; and Senator Hukill

576-03817-15

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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 a state agency, or a political subdivision from using
5 a drone to capture an image of privately owned real
6 property or of the owner, tenant, occupant, invitee,
7 or licensee of such property with the intent to
8 conduct surveillance without his or her written
9 consent if a reasonable expectation of privacy exists;
10 specifying when a reasonable expectation of privacy
11 may be presumed; authorizing the use of a drone by a
12 person or entity engaged in a business or profession
13 licensed by the state in certain circumstances;
14 authorizing the use of a drone by an employee or
15 contractor of a property appraiser for the purpose of
16 assessing property for ad valorem taxation;
17 authorizing the use of a drone by or on behalf of
18 certain utilities for specified purposes; providing
19 that an owner, tenant, occupant, invitee, or licensee
20 may initiate a civil action for compensatory damages
21 and may seek injunctive relief against a person, a
22 state agency, or a political subdivision that violates
23 the act; providing for construction; providing for the
24 recovery of attorney fees and punitive damages;
25 specifying that remedies provided by the act are
26 cumulative to other remedies; providing an effective
27 date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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

934.50 Searches and seizure using a drone.—

(1) SHORT TITLE.—This act may be cited as the “Freedom from Unwarranted Surveillance Act.”

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

(a) “Drone” means a powered, aerial vehicle that:

1. Does not carry a human operator;
2. Uses aerodynamic forces to provide vehicle lift;
3. Can fly autonomously or be piloted remotely;
4. Can be expendable or recoverable; and
5. Can carry a lethal or nonlethal payload.

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

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

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

(e) “Surveillance” means:

1. With respect to an owner, tenant, occupant, invitee, or

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59 licensee of privately owned real property, the observation of
60 such persons with sufficient visual clarity to be able to obtain
61 information about their identity, habits, conduct, movements, or
62 whereabouts; or

63 2. With respect to privately owned real property, the
64 observation of such property's physical improvements with
65 sufficient visual clarity to be able to determine unique
66 identifying features or its occupancy by one or more persons.

67 (3) PROHIBITED USE OF DRONES.—

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

70 (b) A person, a state agency, or a political subdivision as
71 defined in s. 11.45 may not use a drone equipped with an imaging
72 device to record an image of privately owned real property or of
73 the owner, tenant, occupant, invitee, or licensee of such
74 property with the intent to conduct surveillance on the
75 individual or property captured in the image in violation of
76 such person's reasonable expectation of privacy without his or
77 her written consent. For purposes of this section, a person is
78 presumed to have a reasonable expectation of privacy on his or
79 her privately owned real property if he or she is not observable
80 by persons located at ground level in a place where they have a
81 legal right to be, regardless of whether he or she is observable
82 from the air with the use of a drone. This paragraph is not
83 intended to limit or restrict the application of federal law to
84 the use of drones.

85 (4) EXCEPTIONS.—This section ~~act~~ does not prohibit the use
86 of a drone:

87 (a) To counter a high risk of a terrorist attack by a

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88 specific individual or organization if the United States
89 Secretary of Homeland Security determines that credible
90 intelligence indicates that there is such a risk.

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

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

99 (d) By a person or an entity engaged in a business or
100 profession licensed by the state, or by an agent, employee, or
101 contractor thereof, if the drone is used only to perform
102 reasonable tasks within the scope of practice or activities
103 permitted under such person's or entity's license. However, this
104 exception does not apply to a profession in which the licensee's
105 authorized scope of practice includes obtaining information
106 about the identity, habits, conduct, movements, whereabouts,
107 affiliations, associations, transactions, reputation, or
108 character of any society, person, or group of persons.

109 (e) By an employee or a contractor of a property appraiser
110 who uses a drone solely for the purpose of assessing property
111 for ad valorem taxation.

112 (f) To capture images by or for an electric, water, or
113 natural gas utility:

114 1. For operations and maintenance of utility facilities,
115 including facilities used in the generation, transmission, or
116 distribution of electricity, gas, or water, for the purpose of

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117 maintaining utility system reliability and integrity;

118 2. For inspecting utility facilities, including pipelines,
119 to determine construction, repair, maintenance, or replacement
120 needs before, during, and after construction of such facilities;

121 3. For assessing vegetation growth for the purpose of
122 maintaining clearances on utility rights-of-way;

123 4. For utility routing, siting, and permitting for the
124 purpose of constructing utility facilities or providing utility
125 service; or

126 5. For conducting environmental monitoring, as provided by
127 federal, state, or local law, rule, or permit.

128 (5) REMEDIES FOR VIOLATION.—

129 (a) An aggrieved party may initiate a civil action against
130 a law enforcement agency to obtain all appropriate relief in
131 order to prevent or remedy a violation of this ~~section~~.

132 (b) The owner, tenant, occupant, invitee, or licensee of
133 privately owned real property may initiate a civil action for
134 compensatory damages for violations of this section and may seek
135 injunctive relief to prevent future violations of this section
136 against a person, state agency, or political subdivision that
137 violates paragraph (3) (b). In such action, the prevailing party
138 is entitled to recover reasonable attorney fees from the
139 nonprevailing party based on the actual and reasonable time
140 expended by his or her attorney billed at an appropriate hourly
141 rate and, in cases in which the payment of such a fee is
142 contingent on the outcome, without a multiplier, unless the
143 action is tried to verdict, in which case a multiplier of up to
144 twice the actual value of the time expended may be awarded in
145 the discretion of the trial court.

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146 (c) Punitive damages for a violation of paragraph (3)(b)
147 may be sought against a person subject to other requirements and
148 limitations of law, including, but not limited to, part II of
149 chapter 768 and case law.

150 (d) The remedies provided for a violation of paragraph
151 (3)(b) are cumulative to other existing remedies.

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

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