

By Senator Hukill

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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, or occupant of such
7 property with the intent to conduct surveillance
8 without his or her written consent if a reasonable
9 expectation of privacy exists; specifying when a
10 reasonable expectation of privacy may be presumed;
11 providing that an owner, tenant, or occupant may
12 initiate a civil action for compensatory damages or
13 seek injunctive relief against a person, a state
14 agency, or a political subdivision that violates the
15 act; providing for the recovery of attorney fees and
16 punitive damages; specifying that remedies provided by
17 the act are cumulative to other remedies; providing an
18 effective date.

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

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

24 934.50 Searches and seizure using a drone.—

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

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

28 (a) "Drone" means a powered, aerial vehicle that:

29 1. Does not carry a human operator;

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30 2. Uses aerodynamic forces to provide vehicle lift;

31 3. Can fly autonomously or be piloted remotely;

32 4. Can be expendable or recoverable; and

33 5. Can carry a lethal or nonlethal payload.

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

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

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

48 (3) PROHIBITED USE OF DRONES.—

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

51 (b) A person, a state agency, or a political subdivision as
52 defined in s. 11.45 may not use a drone equipped with an imaging
53 device to record an image of privately owned or occupied real
54 property or of the owner, tenant, or occupant of such property
55 with the intent to conduct surveillance on the individual or
56 property captured in the image in violation of such person's
57 reasonable expectation of privacy without his or her written
58 consent. For purposes of this section, a person is presumed to

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59 have a reasonable expectation of privacy on his or her privately
60 owned or occupied real property if he or she is not observable
61 by persons located at ground level in a place where they have a
62 legal right to be, regardless of whether he or she is observable
63 from the air with the use of a drone.

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

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

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

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

78 (5) REMEDIES FOR VIOLATION.—

79 (a) An aggrieved party may initiate a civil action against
80 a law enforcement agency to obtain all appropriate relief in
81 order to prevent or remedy a violation of this act.

82 (b) The owner, tenant, or occupant of privately owned or
83 occupied real property may initiate a civil action for
84 compensatory damages for violations of this section and may seek
85 injunctive relief to prevent future violations of this section
86 against a person, state agency, or political subdivision that
87 violates paragraph (3) (b). In such action, the prevailing party

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88 is entitled to recover reasonable attorney fees from the
89 nonprevailing party based on the actual and reasonable time
90 expended by his or her attorney billed at an appropriate hourly
91 rate and, in cases in which the payment of such a fee is
92 contingent on the outcome, without a multiplier, unless the
93 action is tried to verdict, in which case a multiplier of up to
94 twice the actual value of the time expended may be awarded in
95 the discretion of the trial court.

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

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

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

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