

By Senator Richter

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1 A bill to be entitled
2 An act relating to drone surveillance; providing a
3 short title; amending s. 934.50, F.S.; conforming a
4 cross-reference for purposes of a short title;
5 requiring the Department of Law Enforcement to develop
6 guidelines for the use of drones by state or local law
7 enforcement agencies; requiring such law enforcement
8 agencies to annually report to the department, and
9 requiring the department to annually report to the
10 Governor and Legislature, regarding drone usage;
11 creating s. 934.55, F.S.; providing definitions;
12 specifying situations in which it is lawful to capture
13 an image with a drone; prohibiting the capture of an
14 image of an individual or privately owned real
15 property using a drone in certain circumstances;
16 providing criminal penalties; prohibiting possession,
17 disclosure, display, distribution, or use of such
18 illegally captured images; providing criminal
19 penalties; providing defenses to prosecution;
20 prohibiting the use or discovery of such images in
21 legal proceedings; providing exceptions; providing for
22 civil actions for damages relating to violations;
23 providing for court costs and attorney fees;
24 specifying a limitations period for such actions;
25 providing applicability; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. This act may be cited as the "Florida Drone

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30 Privacy Act."

31 Section 2. Subsection (1) of section 934.50, Florida
32 Statutes, is amended, and subsections (7) and (8) are added to
33 that section, to read:

34 934.50 Law enforcement use of drones ~~Searches and seizure~~
35 ~~using a drone.~~-

36 (1) SHORT TITLE.-This section ~~act~~ may be cited as the
37 "Freedom from Unwarranted Surveillance Act."

38 (7) GUIDELINES.-The Department of Law Enforcement shall
39 adopt guidelines for the use of a drone by state or local law
40 enforcement agencies in accordance with this section.

41 (8) REPORTING.-

42 (a) Each January 15, a state law enforcement agency and a
43 county or municipal law enforcement agency located in a county
44 or municipality, as applicable, with a population greater than
45 150,000 that used or operated a drone during the preceding year
46 shall report, to the extent such information is not exempt from
47 disclosure under chapter 119, to the Department of Law
48 Enforcement:

49 1. The number of times a drone was used by that reporting
50 entity, organized by date, time, location, and type of incident
51 for each use.

52 2. The number of criminal investigations aided by the use
53 of a drone and a description of how the drone aided in each
54 investigation.

55 3. The number of times a drone was used for a law
56 enforcement operation other than a criminal investigation, the
57 dates and locations of those operations, and a description of
58 how the drone aided in each operation.

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59 4. The type of information collected on the individual,
60 residence, property, or area that was not the subject of a law
61 enforcement operation and the frequency of the collection of
62 this information.

63 5. The total cost of acquiring, maintaining, repairing, and
64 operating or otherwise using each drone for the preceding year.

65 (b) Each April 1, the Department of Law Enforcement shall
66 report to the Governor, the President of the Senate, and the
67 Speaker of the House of Representatives, summarizing the
68 information received under paragraph (a) concerning the use of
69 drones in the state, including summary totals for each
70 jurisdiction reporting the information received under paragraph
71 (a).

72 Section 3. Section 934.55, Florida Statutes, is created to
73 read:

74 934.55 Use of drones to capture images; generally.—

75 (1) DEFINITIONS.—As used in this section, the term:

76 (a) "Drone" has the same meaning as provided in s. 934.50.

77 (b) "Image" means any capturing of sound waves; thermal,
78 infrared, ultraviolet, or visible light; or other
79 electromagnetic waves, odor, or other conditions existing on or
80 about real property in this state or an individual located on
81 that property.

82 (2) APPLICABILITY.—

83 (a) It is lawful to capture an image using a drone in this
84 state:

85 1. For purposes of professional or scholarly research and
86 development by a person acting on behalf of a college or
87 university, as defined in s. 1005.02, including a person who:

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88 a. Is a professor, employee, or student of the institution;

89 or

90 b. Is under contract with or otherwise acting under the
91 direction or on behalf of the institution;

92 2. In airspace designated as a test site or range
93 authorized by the Federal Aviation Administration for the
94 purpose of integrating drone systems into the national airspace;

95 3. As part of an operation, an exercise, or a mission of
96 any branch of the United States military;

97 4. If the image is captured by a satellite for the purpose
98 of mapping;

99 5. If the image is captured by or for an electric or
100 natural gas utility:

101 a. For operations and maintenance of utility facilities for
102 the purpose of maintaining utility system reliability and
103 integrity;

104 b. For inspecting utility facilities to determine repair,
105 maintenance, or replacement needs during and after construction
106 of such facilities;

107 c. For assessing vegetation growth for the purpose of
108 maintaining clearances on utility easements; and

109 d. For utility facility routing and siting for the purpose
110 of providing utility service;

111 6. With the consent of the individual who owns or lawfully
112 occupies the real property captured in the image;

113 7. If the image is captured by a law enforcement agency in
114 compliance with s. 934.50(4);

115 8. If the image is captured by state or local law
116 enforcement authorities, or a person who is under contract with

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117 or otherwise acting under the direction or on behalf of such
118 authorities, for the purpose of:

119 a. Surveying the scene of a catastrophe or other damage to
120 determine whether a state of emergency should be declared,
121 allowing for the use of drones before, during, and after manmade
122 or natural disasters, and in exercises with local, state, and
123 federal organizations that have emergency management roles and
124 missions;

125 b. Preserving public safety, protecting property, or
126 surveying damage or contamination during a lawfully declared
127 state of emergency; or

128 c. Conducting routine air quality sampling and monitoring,
129 as provided by state or local law;

130 9. At the scene of a spill, or a suspected spill, of
131 hazardous materials;

132 10. For the purpose of fire suppression;

133 11. For the purpose of rescuing a person whose life or
134 well-being is in imminent danger;

135 12. If the image is captured by a real estate broker
136 licensed in this state in connection with the marketing, sale,
137 or financing of real property, provided that no individual is
138 identifiable in the image;

139 13. Of real property or a person on real property that is
140 within 25 miles of the United States border;

141 14. From a height of no more than 8 feet above ground level
142 in a public place, if the image was captured without using any
143 electronic, mechanical, or other means to amplify the image
144 beyond normal human perception;

145 15. Of public real property or a person on such property;

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146 16. If the image is captured by the owner or operator of an
147 oil, gas, water, or other pipeline for the purpose of
148 inspecting, maintaining, or repairing the pipeline or other
149 related facility, provided that the image is captured without
150 the intent to conduct surveillance on an individual or real
151 property located in this state;

152 17. In connection with oil pipeline safety and rig
153 protection; or

154 18. In connection with port authority surveillance and
155 security.

156 (b) This section does not apply to the manufacture,
157 assembly, distribution, or sale of a drone.

158 (3) ILLEGAL USE OF DRONE TO CAPTURE IMAGE.—

159 (a) A person violates this subsection if the person uses a
160 drone to capture an image of an individual or privately owned
161 real property in this state with the intent to conduct
162 surveillance on the individual or property captured in the
163 image.

164 (b) A violation of this subsection is a misdemeanor of the
165 second degree, punishable as provided in s. 775.082 or s.
166 775.083.

167 (c) It is a defense to prosecution under this subsection
168 that the person destroyed the image as soon as the person had
169 knowledge that the image was captured in violation of this
170 subsection and did so without disclosing, displaying, or
171 distributing the image to a third party.

172 (4) POSSESSION, DISCLOSURE, DISPLAY, DISTRIBUTION, OR USE
173 OF IMAGE.—

174 (a) A person violates this subsection if the person:

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175 1. Captures an image in violation of subsection (3);

176 and

177 2. Possesses, discloses, displays, distributes, or
178 otherwise uses that image.

179 (b)1. A violation of paragraph (a) for the possession of an
180 image is a misdemeanor of the second degree, punishable as
181 provided in s. 775.082 or s. 775.083.

182 2. A violation of paragraph (a) for the disclosure,
183 display, distribution, or other use of an image is a misdemeanor
184 of the first degree, punishable as provided in s. 775.082 or s.
185 775.083.

186 (c) Each image that a person possesses, discloses,
187 displays, distributes, or otherwise uses in violation of this
188 subsection is a separate offense.

189 (d) It is a defense to prosecution under this subsection
190 for the possession of an image that the person destroyed as soon
191 as the person had knowledge that the image was captured in
192 violation of subsection (3).

193 (e) It is a defense to prosecution under this subsection
194 for the disclosure, display, distribution, or other use of an
195 image that the person stopped disclosing, displaying,
196 distributing, or otherwise using the image as soon as the person
197 had knowledge that the image was captured in violation of
198 subsection (3).

199 (5) ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT SUBJECT
200 TO DISCLOSURE.—

201 (a) Except as otherwise provided in paragraph (b), an image
202 captured in violation of subsection (3), or an image captured by
203 a drone that was incidental to the lawful capturing of an image:

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204 1. May not be used as evidence in any criminal or juvenile
205 proceeding, civil action, or administrative proceeding; and

206 2. Is not subject to discovery, subpoena, or other means of
207 legal compulsion for its release.

208 (b) An image described in paragraph (a) may be disclosed
209 and used as evidence in a prosecution for any violation of this
210 section and is subject to discovery, subpoena, or other means of
211 legal compulsion for that purpose.

212 (6) CIVIL ACTION.—

213 (a) An owner or tenant of privately owned real property
214 located in this state may bring against a person, who in
215 violation of subsection (3) captured an image of the property or
216 the owner or tenant while on the property, an action to:

217 1. Enjoin a violation or imminent violation of subsection
218 (3) or subsection (4).

219 2. Recover a civil penalty of:

220 a. Five thousand dollars for all images captured in a
221 single episode in violation of subsection (3); or

222 b. Ten thousand dollars for disclosure, display,
223 distribution, or other use of all images captured in a single
224 episode in violation of subsection (4).

225 3. Recover actual damages if the person who captured the
226 image in violation of subsection (3) discloses, displays, or
227 distributes the image with malice.

228 (b) For purposes of recovering the civil penalty or actual
229 damages under paragraph (a), all owners of a parcel of real
230 property are considered to be a single owner and all tenants of
231 a parcel of real property are considered to be a single tenant.

232 (c) In addition to any civil penalties authorized under

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233 this subsection, the court shall award court costs and
234 reasonable attorney fees to the prevailing party.

235 (d) Notwithstanding s. 95.11, an action brought under this
236 subsection must be commenced within 2 years after the date that
237 the image was:

238 1. Captured in violation of subsection (3); and

239 2. Initially disclosed, displayed, distributed, or
240 otherwise used in violation of subsection (4).

241 Section 4. Section 934.55, Florida Statutes, as created by
242 this act, applies only to images captured on or after October 1,
243 2015.

244 Section 5. This act shall take effect October 1, 2015.