

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

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

28

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

31 934.50 Searches and seizure using a drone.—

32 (1) SHORT TITLE.—This section ~~act~~ may be cited as the
33 "Freedom from Unwarranted Surveillance Act."

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

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

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

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

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

50 (d) ~~(b)~~ "Law enforcement agency" means a lawfully
51 established state or local public agency that is responsible for
52 the prevention and detection of crime, local government code

53 enforcement, and the enforcement of penal, traffic, regulatory,
 54 game, or controlled substance laws.

55 (3) PROHIBITED USE OF DRONES.—

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

58 (b) A person, a state agency, or a political subdivision
 59 as defined in s. 11.45 may not use a drone equipped with an
 60 imaging device to record an image of privately owned or occupied
 61 real property or of the owner, tenant, occupant, invitee, or
 62 licensee of such property with the intent to conduct
 63 surveillance on the individual or property captured in the image
 64 in violation of such person's reasonable expectation of privacy
 65 without his or her written consent. For purposes of this
 66 section, a person is presumed to have a reasonable expectation
 67 of privacy on his or her privately owned or occupied real
 68 property if he or she is not observable by persons located at
 69 ground level in a place where they have a legal right to be,
 70 regardless of whether he or she is observable from the air with
 71 the use of a drone. This paragraph is not intended to limit or
 72 restrict the application of federal law to the use of drones for
 73 surveillance purposes.

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

76 (a) To counter a high risk of a terrorist attack by a
 77 specific individual or organization if the United States
 78 Secretary of Homeland Security determines that credible

79 intelligence indicates that there is such a risk.

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

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

88 (d) By a person or an entity engaged in a business or
89 profession licensed by the state, or by an agent, employee, or
90 contractor thereof, if the drone is used only to perform
91 reasonable tasks within the scope of practice or activities
92 permitted under such person's or entity's license. However, this
93 exception does not apply to a profession in which the licensee's
94 authorized scope of practice includes obtaining information
95 about the identity, habits, conduct, movements, whereabouts,
96 affiliations, associations, transactions, reputation, or
97 character of any society, person, or group of persons.

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

101 (5) REMEDIES FOR VIOLATION.—

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

105 (b) The owner, tenant, occupant, invitee, or licensee of
 106 privately owned or occupied real property may initiate a civil
 107 action for compensatory damages for violations of this section
 108 and may seek injunctive relief against a person, state agency,
 109 or political subdivision that violates paragraph (3) (b) to
 110 prevent future such violations. In such action, the prevailing
 111 party is entitled to recover reasonable attorney fees from the
 112 nonprevailing party based on the actual and reasonable time
 113 expended by his or her attorney billed at an appropriate hourly
 114 rate and, in cases in which the payment of such a fee is
 115 contingent on the outcome, without a multiplier, unless the
 116 action is tried to verdict, in which case a multiplier of up to
 117 twice the actual value of the time expended may be awarded in
 118 the discretion of the trial court.

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

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

125 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 126 collected in violation of this section ~~act~~ is not admissible as
 127 evidence in a criminal prosecution in any court of law in this
 128 state.

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