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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; authorizing
19 the use of a drone for aerial mapping under certain
20 circumstances; authorizing the use of a drone for
21 delivering cargo under certain circumstances;
22 authorizing the use of a drone to capture certain
23 images under certain circumstances; providing that an
24 owner, tenant, occupant, invitee, or licensee may
25 initiate a civil action for compensatory damages and
26 may seek injunctive relief against a person, a state
27 agency, or a political subdivision that violates the
28 act; providing for construction; providing for the
29 recovery of attorney fees and punitive damages;

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30 specifying that remedies provided by the act are
31 cumulative to other remedies; providing an effective
32 date.

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

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

38 934.50 Searches and seizure using a drone.—

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

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

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

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

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

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

57 (d) ~~(b)~~ “Law enforcement agency” means a lawfully
58 established state or local public agency that is responsible for

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59 the prevention and detection of crime, local government code
60 enforcement, and the enforcement of penal, traffic, regulatory,
61 game, or controlled substance laws.

62 (e) "Surveillance" means:

63 1. With respect to an owner, tenant, occupant, invitee, or
64 licensee of privately owned real property, the observation of
65 such persons with sufficient visual clarity to be able to obtain
66 information about their identity, habits, conduct, movements, or
67 whereabouts; or

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

72 (3) PROHIBITED USE OF DRONES.—

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

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

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

90 (a) To counter a high risk of a terrorist attack by a
91 specific individual or organization if the United States
92 Secretary of Homeland Security determines that credible
93 intelligence indicates that there is such a risk.

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

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

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

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

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

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117 1. For operations and maintenance of utility facilities,
118 including facilities used in the generation, transmission, or
119 distribution of electricity, gas, or water, for the purpose of
120 maintaining utility system reliability and integrity;

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

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

126 4. For utility routing, siting, and permitting for the
127 purpose of constructing utility facilities or providing utility
128 service; or

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

131 (g) For aerial mapping, if the person or entity using a
132 drone for this purpose is operating in compliance with Federal
133 Aviation Administration regulations.

134 (h) To deliver cargo, if the person or entity using a drone
135 for this purpose is operating in compliance with Federal
136 Aviation Administration regulations.

137 (i) To capture images necessary for the safe operation or
138 navigation of a drone that is being used for a purpose allowed
139 under federal or Florida law.

140 (5) REMEDIES FOR VIOLATION.—

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

144 (b) The owner, tenant, occupant, invitee, or licensee of
145 privately owned real property may initiate a civil action for

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146 compensatory damages for violations of this section and may seek
147 injunctive relief to prevent future violations of this section
148 against a person, state agency, or political subdivision that
149 violates paragraph (3) (b). In such action, the prevailing party
150 is entitled to recover reasonable attorney fees from the
151 nonprevailing party based on the actual and reasonable time
152 expended by his or her attorney billed at an appropriate hourly
153 rate and, in cases in which the payment of such a fee is
154 contingent on the outcome, without a multiplier, unless the
155 action is tried to verdict, in which case a multiplier of up to
156 twice the actual value of the time expended may be awarded in
157 the discretion of the trial court.

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

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

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

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