

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

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Section 1. This act may be cited as the "Florida Drone Privacy Act."

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

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

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

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

(8) REPORTING.—

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

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

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.

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,
64 and operating or otherwise using each drone for the preceding
65 year.

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

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

75 934.55 Use of drones to capture images; generally.—

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

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

78 (b) "Image" means any capturing of sound waves; thermal,

79 infrared, ultraviolet, or visible light; or other
 80 electromagnetic waves, odor, or other conditions existing on or
 81 about real property in this state or an individual located on
 82 that property.

83 (2) APPLICABILITY.—

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

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

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

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

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

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

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

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

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

- 105 b. For inspecting utility facilities to determine repair,
106 maintenance, or replacement needs during and after construction
107 of such facilities;
- 108 c. For assessing vegetation growth for the purpose of
109 maintaining clearances on utility easements; and
- 110 d. For utility facility routing and siting for the purpose
111 of providing utility service;
- 112 6. With the consent of the individual who owns or lawfully
113 occupies the real property captured in the image;
- 114 7. If the image is captured by a law enforcement agency in
115 compliance with s. 934.50(4);
- 116 8. If the image is captured by state or local law
117 enforcement authorities, or a person who is under contract with
118 or otherwise acting under the direction or on behalf of such
119 authorities, for the purpose of:
- 120 a. Surveying the scene of a catastrophe or other damage to
121 determine whether a state of emergency should be declared,
122 allowing for the use of drones before, during, and after manmade
123 or natural disasters, and in exercises with local, state, and
124 federal organizations that have emergency management roles and
125 missions;
- 126 b. Preserving public safety, protecting property, or
127 surveying damage or contamination during a lawfully declared
128 state of emergency; or
- 129 c. Conducting routine air quality sampling and monitoring,
130 as provided by state or local law;

- 131 9. At the scene of a spill, or a suspected spill, of
132 hazardous materials;
- 133 10. For the purpose of fire suppression;
- 134 11. For the purpose of rescuing a person whose life or
135 well-being is in imminent danger;
- 136 12. If the image is captured by a real estate broker
137 licensed in this state in connection with the marketing, sale,
138 or financing of real property, provided that no individual is
139 identifiable in the image;
- 140 13. Of real property or a person on real property that is
141 within 25 miles of the United States border;
- 142 14. From a height of no more than 8 feet above ground
143 level in a public place, if the image was captured without using
144 any electronic, mechanical, or other means to amplify the image
145 beyond normal human perception;
- 146 15. Of public real property or a person on such property;
- 147 16. If the image is captured by the owner or operator of
148 an oil, gas, water, or other pipeline for the purpose of
149 inspecting, maintaining, or repairing the pipeline or other
150 related facility, provided that the image is captured without
151 the intent to conduct surveillance on an individual or real
152 property located in this state;
- 153 17. In connection with oil pipeline safety and rig
154 protection; or
- 155 18. In connection with port authority surveillance and
156 security.

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

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

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

165 (b) A violation of this subsection is a misdemeanor of the
166 second degree, punishable as provided in s. 775.082 or s.
167 775.083.

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

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

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

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

177 and

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

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

183 2. A violation of paragraph (a) for the disclosure,
 184 display, distribution, or other use of an image is a misdemeanor
 185 of the first degree, punishable as provided in s. 775.082 or s.
 186 775.083.

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

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

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

200 (5) ILLEGALLY OR INCIDENTALY CAPTURED IMAGES NOT SUBJECT
 201 TO DISCLOSURE.—

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

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

208 2. Is not subject to discovery, subpoena, or other means

209 of legal compulsion for its release.

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

214 (6) CIVIL ACTION.—

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

219 1. Enjoin a violation or imminent violation of subsection
220 (3) or subsection (4).

221 2. Recover a civil penalty of:

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

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

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

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

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

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

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

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

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

243 Section 4. Section 934.55, Florida Statutes, as created by
244 this act, applies only to images captured on or after October 1,
245 2015.

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