

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 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 an entity engaged in a business or
13 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; authorizing the use
18 of a drone by certain utilities for specified
19 purposes; providing that the owner, tenant, occupant,
20 invitee, or licensee may initiate a civil action for
21 compensatory damages and may seek injunctive relief
22 against a person, state agency, or political
23 subdivision for violations; providing for the recovery
24 of attorney fees and punitive damages; specifying that
25 remedies provided are cumulative to other existing
26 remedies; providing an effective date.

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

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

934.50 Searches and seizure using a drone.—

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

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

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

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

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

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

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

53 the prevention and detection of crime, local government code
 54 enforcement, and the enforcement of penal, traffic, regulatory,
 55 game, or controlled substance laws.

56 (e) "Surveillance" means:

57 1. With respect to an owner, tenant, occupant, invitee, or
 58 licensee of privately owned real property, to observe, with
 59 visual clarity that is sufficient to be able to obtain
 60 information about, the identity, habits, conduct, movements, or
 61 whereabouts of such person or persons; or

62 2. With respect to privately owned real property, to
 63 observe, with visual clarity that is sufficient to be able to
 64 obtain information about, the property's physical improvements,
 65 unique identifying features, or occupancy by one or more
 66 persons.

67 (3) PROHIBITED USE OF DRONES.—

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

70 (b) A person, a state agency, or a political subdivision
 71 as defined in s. 11.45 may not use a drone equipped with an
 72 imaging device to record an image of privately owned real
 73 property or of the owner, tenant, occupant, invitee, or licensee
 74 of such property with the intent to conduct surveillance on the
 75 individual or property captured in the image in violation of
 76 such person's reasonable expectation of privacy without his or
 77 her written consent. For purposes of this section, a person is
 78 presumed to have a reasonable expectation of privacy on his or

79 her privately owned real property if he or she is not observable
80 by persons located at ground level in a place where they have a
81 legal right to be, regardless of whether he or she is observable
82 from the air with the use of a drone. This paragraph is not
83 intended to limit or restrict the application of federal law to
84 the use of drones.

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

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

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

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

99 (d) By a person or an entity engaged in a business or
100 profession licensed by the state, or by an agent, employee, or
101 contractor thereof, if the drone is used only to perform
102 reasonable tasks within the scope of practice or activities
103 permitted under such person's or entity's license. However, this
104 exception does not apply to a profession in which the licensee's

105 authorized scope of practice includes obtaining information
106 about the identity, habits, conduct, movements, whereabouts,
107 affiliations, associations, transactions, reputation, or
108 character of any society, person, or group of persons.

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

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

114 1. Operations and maintenance of utility facilities,
115 including facilities used in the generation, transmission, or
116 distribution of electricity, gas, or water, for the purpose of
117 maintaining utility system reliability and integrity;

118 2. Inspecting utility facilities, including pipelines, to
119 determine construction, repair, maintenance, or replacement
120 needs before, during, and after construction of such facilities;

121 3. Assessing vegetation growth for the purpose of
122 maintaining clearances on utility rights-of-way;

123 4. Utility routing, siting, and permitting for the purpose
124 of constructing utility facilities or providing utility service;
125 or

126 5. Conducting environmental monitoring, as provided by
127 federal, state, or local law, rule, or permit.

128 (5) REMEDIES FOR VIOLATION.—

129 (a) An aggrieved party may initiate a civil action against
130 a law enforcement agency to obtain all appropriate relief in

131 order to prevent or remedy a violation of this section ~~act~~.

132 (b) The owner, tenant, occupant, invitee, or licensee of
133 privately owned real property may initiate a civil action for
134 compensatory damages for violations of this section and may seek
135 injunctive relief against a person, state agency, or political
136 subdivision that violates paragraph (3) (b) to prevent future
137 such violations. In such action, the prevailing party is
138 entitled to recover reasonable attorney fees from the
139 nonprevailing party based on the actual and reasonable time
140 expended by his or her attorney billed at an appropriate hourly
141 rate and, in cases in which the payment of such a fee is
142 contingent on the outcome, without a multiplier, unless the
143 action is tried to verdict, in which case a multiplier of up to
144 twice the actual value of the time expended may be awarded in
145 the discretion of the trial court.

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

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

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

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