

CHAPTER 2015-26

Committee Substitute for Committee Substitute for Senate Bill No. 766

An act relating to surveillance by a drone; amending s. 934.50, F.S.; defining terms; prohibiting a person, a state agency, or a political subdivision from using a drone to capture an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance without his or her written consent if a reasonable expectation of privacy exists; specifying when a reasonable expectation of privacy may be presumed; authorizing the use of a drone by a person or entity engaged in a business or profession licensed by the state in certain circumstances; authorizing the use of a drone by an employee or contractor of a property appraiser for the purpose of assessing property for ad valorem taxation; authorizing the use of a drone by or on behalf of certain utilities for specified purposes; authorizing the use of a drone for aerial mapping under certain circumstances; authorizing the use of a drone for delivering cargo under certain circumstances; authorizing the use of a drone to capture certain images under certain circumstances; providing that an owner, tenant, occupant, invitee, or licensee may initiate a civil action for compensatory damages and may seek injunctive relief against a person, a state agency, or a political subdivision that violates the act; providing for construction; providing for the recovery of attorney fees and punitive damages; specifying that remedies provided by the act are cumulative to other remedies; providing an effective date.

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 act may be cited as the “Freedom from Unwarranted Surveillance Act.”

(2) **DEFINITIONS.**—As used in this 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 the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

(e) “Surveillance” means:

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

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

(3) PROHIBITED USE OF DRONES.—

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

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

(4) EXCEPTIONS.—This section aet does not prohibit the use of a drone:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) REMEDIES FOR VIOLATION.—

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

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

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

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

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

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

Approved by the Governor May 14, 2015.

Filed in Office Secretary of State May 14, 2015.