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Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1328

Introduced by

Representatives Rick C. Becker, Beadle, Boehning, Kasper, Klemin, Ruby, Thoreson, Toman

Senators Anderson, Hogue, Larsen, Unruh

A BILL for an Act to provide for limitations on the use of unmanned aircraft for surveillance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Definitions.

As used in this Act:

1. "Law enforcement agency" means a person authorized by law, or funded by the state, to investigate or prosecute offenses against the state.
2. "Unmanned aircraft" means any aircraft that is operated without the possibility of direct human intervention within or on the aircraft.
3. "Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links and the components that control the unmanned aircraft, which are required for the pilot in command to operate safely and efficiently in state airspace.

SECTION 2.

Prohibited use of unmanned aircraft system.

1. Except as provided in section 4 of this Act, a law enforcement agency may not use an unmanned aircraft for surveillance of a person within the state or for the surveillance of personal or business property located within the borders of the state to gather evidence or other information pertaining to criminal conduct, or conduct in violation of a statute or regulation except to the extent authorized in a warrant issued by a court which satisfies the requirements of the Constitution of North Dakota.
2. Warrants to conduct surveillance with an unmanned aircraft may be issued only in the investigation of a felony. Unmanned aircraft may not be used to conduct investigations of misdemeanors, traffic infractions, or other non-felony violations of law.

SECTION 3.

Warrant requirements.

A warrant for the use of an unmanned aircraft must satisfy the requirements of the Constitution of North Dakota. In addition, the warrant must contain a data collection statement that includes:

1. The persons that will have the power to authorize the use of the unmanned aircraft;
2. The locations in which the unmanned aircraft system will operate;
3. The maximum period for which the unmanned aircraft system will operate in each flight; and
4. Whether the unmanned aircraft system will collect information or data about individuals or groups of individuals, and if so:
   a. The circumstances under which the unmanned aircraft system will be used; and
   b. The specific kinds of information or data the unmanned aircraft system will collect about individuals and how that information or data, as well as conclusions drawn from that information or data, will be used, disclosed, and otherwise handled, including:
      (1) The period for which the information or data will be retained; and
      (2) Whether the information or data will be destroyed, and if so, when and how the information or data will be destroyed.

SECTION 4.

Exceptions.

This Act does not prohibit any use of an unmanned aircraft for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aircraft to patrol within twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that border to prevent or deter the illegal entry of any individual, illegal substance, or contraband.
2. Exigent circumstances. The use of an unmanned aircraft by a law enforcement agency is permitted when exigent circumstances exist. For the purposes of this subsection, exigent circumstances exist when a law enforcement agency possesses reasonable suspicion that absent swift preventative action, there is an imminent danger to life or bodily harm.

3. An environmental or weather-related catastrophe. The use of an unmanned aircraft by state authorities to preserve public safety, protect property, survey environmental damage to determine if a state of emergency should be declared, or conduct surveillance for the assessment and evaluation of environmental or weather-related damage, erosion, flood, or contamination.

4. Testing, training, education, and research of unmanned aircraft systems.

SECTION 5.

Prohibited surveillance.

1. Use of force. A state agency may not authorize the use of, including granting a permit to use, an unmanned aircraft armed with any lethal or nonlethal weapons, including firearms, pepper spray, bean bag guns, mace, and sound-based weapons.

2. This Act prohibits any use of an unmanned aircraft for:

   a. Domestic use in private surveillance. A state agency may not authorize the use of, including granting a permit to use, an unmanned aircraft to permit any private person to conduct surveillance on any other private person without the express, informed consent of that other person or the owner of any real property on which that other private person is present.

   b. Surveillance of the exercise of constitutional rights. A state agency may not authorize the use, including granting a permit to use, of an unmanned aircraft for the purpose of the surveillance of persons engaged in the lawful exercise of the constitutional right of freedom of speech and freedom of assembly.

SECTION 6.

Remedies for violation.

Any aggrieved party may obtain in a civil action all appropriate relief to prevent or remedy a violation of this Act.

SECTION 7.

Prohibitions on the conduct of unmanned aircraft surveillance and the use of acquired surveillance as evidence.

1. Evidence obtained or collected in violation of this Act is not admissible as evidence in a criminal prosecution, including use during trial, at sentencing, before a grand jury, as rebuttal evidence, or during administrative hearings in any court of law in the state.

2. Any imaging or other forms of observational data gathered by unmanned aircraft surveillance from or concerning the parties or places subjected to surveillance in violation of this Act may not be preserved by law enforcement for any purpose unless required by a court of law.
3. Any imaging or any other forms of data lawfully obtained under this Act for which there is not a reasonable and articulable suspicion that those images or data contain evidence of a crime, or are relevant to an ongoing investigation or trial, may not be retained for more than ninety days, unless the retention is attendant to general agency guidelines regarding the retention of evidence in criminal cases. In those cases, the imaging or other data may not be distributed to agencies, entities, or individuals if the distribution is not necessary to meet general agency guidelines regarding the retention of evidence in criminal cases.
4. An unmanned aircraft may not conduct any type of surveillance that would violate state laws regarding the interception of aural communications, electronic messaging, personal location data, or acquire video or still images of any individual within a home or place without first obtaining all required warrants in compliance with state statutes relevant to the interception of such voice communications, digital communications, physical surveillance data, or to capture the still or video images of any individual or interior or a place for which a search warrant is prerequisite to its lawful search.

SECTION 8.

Documentation of unmanned aircraft surveillance.

1. The person authorized to conduct the surveillance under this Act shall document all use of an unmanned aircraft for surveillance. The person shall document all surveillance flights as to duration, flight path, and mission objectives, including the names of place or persons authorized to be subject to surveillance.
2. The flight information must be certified as accurate and complete by the supervising person authorized by a court to conduct the surveillance.
3. The flight information required under this section must be retained for five years.
4. Except for the operational capabilities of the unmanned aircraft system and other operational information strictly related to the technical conduct and physical security of the surveillance operation, a person accused of a crime that includes evidence

gathered through the use of an unmanned aircraft system surveillance may obtain all information relating to the person acquired in the course of the surveillance through subpoena and discovery proceedings available in criminal proceedings.

5. Any other person that has an interest in obtaining the documentation required by this section may obtain that documentation pursuant to chapter 44-04.

6. The documentation required by this section applies to all uses of unmanned aircraft systems, including testing, training, education, and research.

SECTION 9.

Application to federal law.

This Act may not be construed to limit, constrain, or adversely impact testing and operations of a state test range under the FAA Modernization and Reform Act of 2012 [Pub. L. 112-95; 126 Stat. 11].