

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1328

Introduced by

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

Senators Anderson, Hogue, Larsen, Unruh

1 A BILL for an Act to provide for limitations on the use of unmanned aerial vehicle for
2 surveillance.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 As used in this Act:

- 7 1. "Flight data" means imaging or other observation recording.
8 2. "Flight information" means flight duration, flight path, and mission objective.
9 3. "Law enforcement agency or agents" has the meaning provided for law enforcement
10 officer in section 12.1-01-04.
11 4. "Unmanned aerial vehicle" means any aerial vehicle that is operated without the
12 possibility of direct human intervention within or on the aerial vehicle. The term does
13 not include satellites.
14 5. "Unmanned aerial vehicle system" means an unmanned aerial vehicle and associated
15 elements, including communication links and the components that control the
16 unmanned aerial vehicle, which are required for the pilot in command to operate safely
17 and efficiently in state airspace.

18 **SECTION 2.**

19 **Limitations on use of unmanned aerial vehicle system.**

- 20 1. Information obtained from an unmanned aerial vehicle is not admissible in a
21 prosecution or proceeding within the state unless the information was obtained:
22 a. Pursuant to the authority of a search warrant; or
23 b. In accordance with exceptions to the warrant requirement.

- 1 2. Information obtained from the operation of an unmanned aerial vehicle may not be
2 used in an affidavit of probable cause in an effort to obtain a search warrant

3 **SECTION 3.**

4 **Warrant requirement.**

5 A warrant for the use of unmanned aerial vehicle must satisfy the requirements of the
6 Constitution of North Dakota. In addition, the warrant must contain a data collection statement
7 that includes:

- 8 1. The persons that will have the power to authorize the use of the unmanned aerial
9 vehicle;
10 2. The locations in which the unmanned aerial vehicle system will operate;
11 3. The maximum period for which the unmanned aerial vehicle system will operate in
12 each flight; and
13 4. Whether the unmanned aerial vehicle system will collect information or data about
14 individuals or groups of individuals, and if so:
15 a. The circumstances under which the unmanned aerial vehicle system will be
16 used; and
17 b. The specific kinds of information or data the unmanned aerial vehicle system will
18 collect about individuals and how that information or data, as well as conclusions
19 drawn from that information or data, will be used, disclosed, and otherwise
20 handled, including:
21 (1) The period for which the information or data will be retained; and
22 (2) Whether the information or data will be destroyed, and if so, when and how
23 the information or data will be destroyed.

24 **SECTION 4.**

25 **Exceptions.**

26 This Act does not prohibit any use of an unmanned aerial vehicles for surveillance during
27 the course of:

- 28 1. Patrol of national borders. The use of an unmanned aerial vehicles to patrol within
29 twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that
30 border to prevent or deter the illegal entry of any individual, illegal substance, or
31 contraband.

2. Exigent circumstances. The use of an unmanned aerial vehicles 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 aerial vehicle by state or local 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. Research, education, training, testing, or development efforts undertaken by or in conjunction with a school or institution of higher education within the state and its political subdivisions, nor to public and private collaborators engaged in mutually supported efforts involving research, education, training, testing, or development related to unmanned aerial vehicle systems or unmanned aerial vehicle system technologies and potential applications.

SECTION 5.

Prohibited use.

This Act prohibits any use of an unmanned aerial vehicle for:

1. A law enforcement agency may not authorize the use, including grant a permit to use, of an unmanned aerial vehicle while armed with any lethal weapons.
2. Domestic use in private surveillance. A law enforcement agency may not authorize the use, including granting a permit to use, of an unmanned aerial vehicle 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.
3. 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.

1 **Documentation of unmanned aerial vehicle use.**

- 2 1. The person authorized to conduct the surveillance under this Act shall document all
3 use of unmanned aerial vehicle for surveillance. The person shall document all
4 surveillance flights as to duration, flight path, and mission objectives.
- 5 2. The flight information must be verified as accurate and complete by the supervising
6 person authorized by a court to conduct the surveillance.
- 7 3. The flight information required under this section must be retained for five years.
- 8 4. Any imaging or any other forms of data lawfully obtained under this Act which are not
9 accompanied by a reasonable and articulable suspicion that the images or data
10 contain evidence of a crime, or are relevant to an ongoing investigation or trial, may
11 not be retained for more than ninety days.
- 12 5. Except for the operational capabilities of the unmanned aerial vehicle system and
13 other operational information strictly related to the technical conduct and physical
14 security of the surveillance operation, a person accused of a crime that includes
15 evidence gathered through the use of unmanned aerial vehicle system surveillance
16 may obtain all information relating to the person acquired in the course of the
17 surveillance through subpoena and discovery proceedings available in criminal
18 proceedings.
- 19 6. Any other person that has an interest in obtaining the documentation required by this
20 section may obtain that documentation pursuant to chapter 44-04.