S T A T E O F N E W Y O R K

4537

2013-2014 Regular Sessions

I N S E N A T E

April 8, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to imposing limitations on the use of drones within the state

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Empire State citizens' protection from unwarranted surveillance act".

S 2. The civil rights law is amended by adding a new section 52-a to read as follows:

S 52-A. LIMITATIONS ON THE USE OF DRONES. 1. NO LAW ENFORCEMENT AGENCY OR A STATE, COUNTY OR MUNICIPAL AGENCY SHALL USE A DRONE OR OTHER UNMANNED AIRCRAFT TO GATHER, STORE OR COLLECT EVIDENCE OF ANY TYPE, INCLUDING AUDIO OR VIDEO RECORDINGS, OR BOTH, OR OTHER INFORMATION PERTAINING TO CRIMINAL CONDUCT OR CONDUCT IN VIOLATION OF A STATUTE OR REGULATION EXCEPT TO THE EXTENT SPECIFICALLY AUTHORIZED IN A VALID SEARCH WARRANT; PROVIDED, HOWEVER, THAT THE USE OF A DRONE BY A LAW ENFORCEMENT AGENCY OR A STATE, COUNTY OR MUNICIPAL AGENCY IS NOT PROHIBITED WHEN EXIGENT CIRCUMSTANCES EXIST. FOR THE PURPOSES OF THIS SECTION, EXIGENT CIRCUMSTANCES EXIST IF A LAW ENFORCEMENT AGENCY POSSESSES REASONABLE SUSPICION THAT SWIFT ACTION IS NECESSARY TO PREVENT IMMINENT DANGER TO LIFE.

2. NO PERSON, ENTITY, OR STATE AGENCY SHALL USE A DRONE OR OTHER UNMANNED AIRCRAFT TO CONDUCT SURVEILLANCE OF OR TO MONITOR ANY INDIVIDUAL INSIDE HIS OR HER HOME OR PLACE OF WORSHIP OR WITHIN THE CLOSED CONFINES OF THEIR PROPERTY OR OTHER LOCATIONS WHERE A PERSON WOULD HAVE AN EXPECTATION OF PRIVACY.

3. THIS SECTION DOES NOT PROHIBIT THE USE OF A DRONE:

A. BY A LAW ENFORCEMENT AGENCY:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(1) IF THE LAW ENFORCEMENT AGENCY FIRST OBTAINS A VALID SEARCH WARRANT THAT AUTHORIZES THE USE OF A DRONE AND THE USE OF THE DRONE IS USED ONLY TO OBTAIN EVIDENCE ON THE PERSON NAMED IN THE WARRANT; AND

(2) THAT IS ACTIVELY ENGAGED IN THE ENFORCEMENT OF ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW;

(3) TO PATROL NATIONAL BORDERS TO PREVENT OR DETER ILLEGAL ENTRY OF ANY PERSONS OR ILLEGAL SUBSTANCES; OR

(4) TO COUNTER A HIGH RISK OF A TERRORIST ATTACK BY A SPECIFIC INDIVIDUAL OR ORGANIZATION BASED ON CREDIBLE INTELLIGENCE DETERMINED BY THE COMMISSIONER OF HOMELAND SECURITY AND EMERGENCY SERVICES; OR

B. BY A PERSON FOR LAWFUL PURPOSES, INCLUDING RECREATIONAL OR HOBBY PURPOSES.

4. A. A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A CLASS B MISDEMEANOR; PROVIDED, HOWEVER, THAT IF THE VIOLATION OF THE PROVISIONS OF THIS SECTION IS COMMITTED IN THE COURSE OF OR IN CONJUNCTION WITH THE COMMISSION OF A FELONY, A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF A CLASS C FELONY.

B. ANY EVIDENCE OR INFORMATION OBTAINED OR COLLECTED IN VIOLATION OF THE PROVISIONS OF THIS SECTION, AND ALL EVIDENCE DERIVED FROM SUCH EVIDENCE OR INFORMATION, SHALL BE INADMISSIBLE IN A CRIMINAL OR CIVIL PROCEEDING IN ANY COURT OF LAW IN THE STATE OR IN AN ADMINISTRATIVE HEARING.

C. AN AGGRIEVED PARTY MAY INITIATE A CIVIL ACTION AGAINST A LAW ENFORCEMENT AGENCY TO OBTAIN ALL APPROPRIATE RELIEF IN ORDER TO PREVENT, RESTRAIN OR REMEDY A VIOLATION OF THIS SECTION.

5. AS USED IN THIS SECTION:

A. "DRONE" MEANS A POWERED OR AN UN-POWERED AERIAL VEHICLE OR A BALLOON FLOAT OR OTHER DEVICE THAT:

(1) DOES NOT CARRY A HUMAN OPERATOR;

(2) USES AERODYNAMIC FORCES OR GASES TO PROVIDE LIFT;

(3) CAN FLY AUTONOMOUSLY OR BE PILOTED REMOTELY;

(4) CAN BE EXPENDABLE OR RECOVERABLE;

(5) CAPTURES IMAGES OF OBJECTS OF PEOPLE ON THE GROUND AND IN THE AIR;

(6) INTERCEPTS COMMUNICATIONS ON THE GROUND AND IN THE AIR; AND/OR

(7) CAN CARRY A LETHAL OR NON-LETHAL PAYLOAD.

B. "EXIGENT CIRCUMSTANCES" MEANS CONDITIONS REQUIRING THE PRESERVATION OF SECRECY, AND WHEREBY THERE IS A REASONABLE LIKELIHOOD THAT A CONTINUING INVESTIGATION WOULD BE THWARTED BY ALERTING ANY OF THE PERSONS SUBJECT TO SURVEILLANCE TO THE FACT THAT SUCH SURVEILLANCE HAD OCCURRED.

C. "LAW ENFORCEMENT AGENCY" MEANS A LAWFULLY ESTABLISHED STATE OR LOCAL PUBLIC AGENCY THAT IS RESPONSIBLE FOR THE PREVENTION AND DETECTION OF CRIME, THE ENFORCEMENT OF LOCAL GOVERNMENT CODES AND THE ENFORCEMENT OF PENAL, TRAFFIC, REGULATORY, GAME OR CONTROLLED SUBSTANCE LAWS AND INCLUDES AN AGENT OF THE LAW ENFORCEMENT AGENCY.

D. "SEARCH WARRANT" MEANS A SEARCH WARRANT AS DEFINED IN SECTION 690.05 OF THE CRIMINAL PROCEDURE LAW.

E. "UNMANNED AIRCRAFT" MEANS AN AIRCRAFT THAT IS OPERATED WITHOUT THE POSSIBILITY OF DIRECT HUMAN INTERVENTION FROM WITHIN OR ON THE AIRCRAFT.

S 3. Severability. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

S 4. This act shall take effect immediately.