

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

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:

- 1 Section 1. This act shall be known and may be cited as the "Empire  
2 State citizens' protection from unwarranted surveillance act".  
3 S 2. The civil rights law is amended by adding a new section 52-a to  
4 read as follows:  
5 S 52-A. LIMITATIONS ON THE USE OF DRONES. 1. NO LAW ENFORCEMENT AGENCY  
6 OR A STATE, COUNTY OR MUNICIPAL AGENCY SHALL USE A DRONE OR OTHER  
7 UNMANNED AIRCRAFT TO GATHER, STORE OR COLLECT EVIDENCE OF ANY TYPE,  
8 INCLUDING AUDIO OR VIDEO RECORDINGS, OR BOTH, OR OTHER INFORMATION  
9 PERTAINING TO CRIMINAL CONDUCT OR CONDUCT IN VIOLATION OF A STATUTE OR  
10 REGULATION EXCEPT TO THE EXTENT SPECIFICALLY AUTHORIZED IN A VALID  
11 SEARCH WARRANT; PROVIDED, HOWEVER, THAT THE USE OF A DRONE BY A LAW  
12 ENFORCEMENT AGENCY OR A STATE, COUNTY OR MUNICIPAL AGENCY IS NOT PROHIB-  
13 ITED WHEN EXIGENT CIRCUMSTANCES EXIST. FOR THE PURPOSES OF THIS  
14 SECTION, EXIGENT CIRCUMSTANCES EXIST IF A LAW ENFORCEMENT AGENCY  
15 POSSESSES REASONABLE SUSPICION THAT SWIFT ACTION IS NECESSARY TO PREVENT  
16 IMMINENT DANGER TO LIFE.  
17 2. NO PERSON, ENTITY, OR STATE AGENCY SHALL USE A DRONE OR OTHER  
18 UNMANNED AIRCRAFT TO CONDUCT SURVEILLANCE OF OR TO MONITOR ANY INDIVID-  
19 UAL INSIDE HIS OR HER HOME OR PLACE OF WORSHIP OR WITHIN THE CLOSED  
20 CONFINES OF THEIR PROPERTY OR OTHER LOCATIONS WHERE A PERSON WOULD HAVE  
21 AN EXPECTATION OF PRIVACY.  
22 3. THIS SECTION DOES NOT PROHIBIT THE USE OF A DRONE:  
23 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 (1) IF THE LAW ENFORCEMENT AGENCY FIRST OBTAINS A VALID SEARCH WARRANT  
2 THAT AUTHORIZES THE USE OF A DRONE AND THE USE OF THE DRONE IS USED ONLY  
3 TO OBTAIN EVIDENCE ON THE PERSON NAMED IN THE WARRANT; AND

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

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

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

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

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

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

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

26 5. AS USED IN THIS SECTION:

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

29 (1) DOES NOT CARRY A HUMAN OPERATOR;

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

31 (3) CAN FLY AUTONOMOUSLY OR BE PILOTED REMOTELY;

32 (4) CAN BE EXPENDABLE OR RECOVERABLE;

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

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

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

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

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

45 D. "SEARCH WARRANT" MEANS A SEARCH WARRANT AS DEFINED IN SECTION  
46 690.05 OF THE CRIMINAL PROCEDURE LAW.

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

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

54 S 4. This act shall take effect immediately.