Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1328
(Representatives Rick C. Becker, Beadle, Boehning, Kasper, Klemin, Ruby, Thoreson, Toman)
(Senators Anderson, Hogue, Larsen, Unruh)

AN ACT to provide for limitations on the use of an unmanned aerial vehicle for surveillance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Definitions.

As used in this Act:

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

SECTION 2.

Limitations on use of unmanned aerial vehicle system.

1. Information obtained from an unmanned aerial vehicle is not admissible in a prosecution or proceeding within the state unless the information was obtained:
   a. Pursuant to the authority of a search warrant; or
   b. In accordance with exceptions to the warrant requirement.
2. Information obtained from the operation of an unmanned aerial vehicle may not be used in an affidavit of probable cause in an effort to obtain a search warrant, unless the information was obtained under the circumstances described in subdivision a or b of subsection 1 or was obtained through the monitoring of public lands or international borders.

SECTION 3.

Warrant requirements.

A warrant for the use of an unmanned aerial vehicle 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 aerial vehicle;
2. The locations in which the unmanned aerial vehicle system will operate;

3. The maximum period for which the unmanned aerial vehicle system will operate in each flight; and

4. Whether the unmanned aerial vehicle system will collect information or data about individuals or groups of individuals, and if so:

   a. The circumstances under which the unmanned aerial vehicle system will be used; and

   b. The specific kinds of information or data the unmanned aerial vehicle 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 aerial vehicle for surveillance during the course of:

1. Patrol of national borders. The use of an unmanned aerial vehicle 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 aerial vehicle 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.

1. A law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle armed with any lethal weapons.

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

   a. Domestic use in private surveillance. A law enforcement agency may not authorize the use of, including granting a permit to use, 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.

b. Surveillance of the lawful exercise of constitutional rights, unless the surveillance is otherwise allowed under this chapter.

SECTION 6.

Documentation of unmanned aerial vehicle use.

1. The person authorized to conduct the surveillance under this Act shall document all use of an unmanned aerial vehicle for surveillance. The person shall document all surveillance flights as to duration, flight path, and mission objectives.

2. The flight information must be verified 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. Any imaging or any other forms of data lawfully obtained under this Act which are not accompanied by a reasonable and articulable suspicion that the 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.

5. Except for the operational capabilities of the unmanned aerial vehicle 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 aerial vehicle 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.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1328.

House Vote:	Yeas 78	Nays 14	Absent 2
Senate Vote:	Yeas 29	Nays 17	Absent 1

Chief Clerk of the House

Received by the Governor at 12:27 P.M. on April 14, 2015.

Approved at 10:50 A.M. on April 15, 2015.

Governor

Filed in this office this 15th day of April, 2015,

at 2:49 o'clock P M.

Secretary of State