

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 303

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PRIVACY; ENACTING THE FREEDOM FROM UNWARRANTED
SURVEILLANCE ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--This act may be
cited as the "Freedom from Unwarranted Surveillance Act".

SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Freedom from Unwarranted Surveillance Act:

A. "drone" means a powered aerial vehicle that:

- (1) does not carry a human operator;
- (2) uses aerodynamic forces to provide vehicle
lift;
- (3) can fly autonomously or be piloted
remotely;
- (4) can be expendable or recoverable; and

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underscored material = new
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1 (5) can carry a lethal or non-lethal payload,
2 including data or image collecting or transmitting devices;

3 B. "law enforcement agency" means any federal,
4 state, tribal, county or municipal law enforcement agency in
5 the state;

6 C. "surveillance" means the observation of a place,
7 person, group or ongoing activity; and

8 D. "unmanned aircraft" means aircraft that is
9 operated without the possibility of direct human intervention
10 from within or on the aircraft.

11 SECTION 3. [NEW MATERIAL] PROHIBITION AGAINST
12 SURVEILLANCE BY DRONE OR UNMANNED AIRCRAFT.--

13 A. A person, state agency, law enforcement agency
14 or political subdivision of the state shall not use a drone or
15 unmanned aircraft with the intent to gather evidence or other
16 information pertaining to criminal conduct or conduct in
17 violation of a statute or regulation on private property in
18 which the property owners have a reasonable expectation of
19 privacy, except to the extent authorized in a warrant. Data or
20 information collection incidental or unrelated to a lawful
21 activity shall not be used to obtain a warrant.

22 B. A person, state agency or political subdivision
23 of the state shall not use a drone or unmanned aircraft to
24 conduct surveillance of a person or of property owned by a
25 person, a farm or an agricultural operation without the consent

1 of that person, property owner, farm or agricultural operation.

2 SECTION 4. [NEW MATERIAL] USE OF DRONES OR UNMANNED
3 AIRCRAFT UNDER EXIGENT CIRCUMSTANCES.--The Freedom from
4 Unwarranted Surveillance Act does not prohibit the use of a
5 drone by a law enforcement agency when exigent circumstances
6 exist. For the purposes of this section, exigent circumstances
7 exist if a law enforcement agency possesses reasonable
8 suspicion that, under particular circumstances, swift action is
9 necessary to prevent imminent danger to life.

10 SECTION 5. [NEW MATERIAL] WARRANTED SURVEILLANCE
11 INFORMATION--CHAIN OF CUSTODY.--Any image, data or other
12 material acquired by a state agency, political subdivision of
13 the state or a law enforcement agency in compliance with the
14 Freedom from Unwarranted Surveillance Act shall be maintained
15 together with a complete and unbroken record of chain of
16 custody consistent with law enforcement procedures.

17 SECTION 6. [NEW MATERIAL] REMEDIES--PENALTIES.--

18 A. An aggrieved person may in a civil action obtain
19 all appropriate relief to prevent or remedy a violation of the
20 Freedom from Unwarranted Surveillance Act. The aggrieved
21 person shall be exempt from prosecution or liability for
22 engaging unilaterally in removing an offending drone or
23 unmanned aircraft operating in violation of that act unless
24 that unilateral action is otherwise prohibited by law.

25 B. No information obtained or collected in

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1 violation of the Freedom from Unwarranted Surveillance Act
2 shall be admissible as evidence in a civil or criminal
3 proceeding in any court of law of the state or in an
4 administrative hearing except to establish a violation of that
5 act. Any such information shall be made available only for in-
6 camera review and shall be released only to the aggrieved
7 party.

8 C. A person who violates Section 3 of the Freedom
9 from Unwarranted Surveillance Act is guilty of a petty
10 misdemeanor and is punishable pursuant to Section 31-19-1 NMSA
11 1978 and shall forfeit and relinquish all images, data and
12 information collected to the aggrieved party. If a violator
13 uses or disseminates any material collected in violation of the
14 Freedom from Unwarranted Surveillance Act, that person is
15 guilty of a misdemeanor punishable pursuant to Section 31-19-1
16 NMSA 1978, and, for a second or subsequent violation, a
17 violator is guilty of a fourth degree felony punishable
18 pursuant to Section 31-18-15 NMSA 1978.