

**FIRST ENGROSSMENT
with Senate Amendments
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 an 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, unless
3 the information was obtained under the circumstances described in subdivision a or b
4 of subsection 1 or was obtained through the monitoring of public lands or international
5 borders.

6 **SECTION 3.**

7 **Warrant requirements.**

8 A warrant for the use of an unmanned aerial vehicle must satisfy the requirements of the
9 Constitution of North Dakota. In addition, the warrant must contain a data collection statement
10 that includes:

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

27 **SECTION 4.**

28 **Exceptions.**

29 This Act does not prohibit any use of an unmanned aerial vehicle for surveillance during the
30 course of:

- 1 1. Patrol of national borders. The use of an unmanned aerial vehicle to patrol within
2 twenty-five miles [40.23 kilometers] of a national border, for purposes of policing that
3 border to prevent or deter the illegal entry of any individual, illegal substance, or
4 contraband.
- 5 2. Exigent circumstances. The use of an unmanned aerial vehicle by a law enforcement
6 agency is permitted when exigent circumstances exist. For the purposes of this
7 subsection, exigent circumstances exist when a law enforcement agency possesses
8 reasonable suspicion that absent swift preventative action, there is an imminent
9 danger to life or bodily harm.
- 10 3. An environmental or weather-related catastrophe. The use of an unmanned aerial
11 vehicle by state or local authorities to preserve public safety, protect property, survey
12 environmental damage to determine if a state of emergency should be declared, or
13 conduct surveillance for the assessment and evaluation of environmental or
14 weather-related damage, erosion, flood, or contamination.
- 15 4. Research, education, training, testing, or development efforts undertaken by or in
16 conjunction with a school or institution of higher education within the state and its
17 political subdivisions, nor to public and private collaborators engaged in mutually
18 supported efforts involving research, education, training, testing, or development
19 related to unmanned aerial vehicle systems or unmanned aerial vehicle system
20 technologies and potential applications.

21 **SECTION 5.**

22 **Prohibited use.**

- 23 1. A law enforcement agency may not authorize the use of, including granting a permit to
24 use, an unmanned aerial vehicle armed with any lethal weapons.
- 25 2. This Act prohibits any use of an unmanned aerial vehicle for:
 - 26 a. Domestic use in private surveillance. A law enforcement agency may not
27 authorize the use of, including granting a permit to use, an unmanned aerial
28 vehicle to permit any private person to conduct surveillance on any other private
29 person without the express, informed consent of that other person or the owner
30 of any real property on which that other private person is present.

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

3 **SECTION 6.**

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

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