

Floor Amendment to SB 519-FN

1 Amend RSA 507-J:1, VI as inserted by section 1 of the bill by replacing it with the following:

2

3 VI.(a) "Surveillance" means:

4 (1) With respect to an owner, tenant, occupant, invitee, or licensee of privately  
5 owned real property, the intentional observation of such persons with sufficient visual clarity to be  
6 able to obtain information about their identity, habits, conduct, movements, or whereabouts; and

7 (2) With respect to privately owned real property, the intentional observation of such  
8 property's physical improvements with sufficient visual clarity to be able to determine unique  
9 identifying features or its occupancy by one or more persons.

10 (b) "Surveillance" does not include the capture of photographs, electronic images, and  
11 associated data by a drone operator that is operating for legitimate business purposes unrelated to  
12 surveillance in a manner consistent with applicable FAA rules, licenses, or exemptions.

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14 Amend RSA 507-J:2 and 507-J:3 as inserted by section 1 of the bill by replacing it with the following:

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16 507-J:2 Prohibition on Use to Violate Privacy.

17 Neither the state, or any political subdivision thereof, nor any person, shall operate a small  
18 unmanned aircraft system that includes an imaging device to conduct surveillance over private  
19 property without written consent from the property owner, in any situation where a reasonable  
20 expectation of privacy exists. For purposes of this section, a reasonable expectation of privacy shall  
21 be presumed to exist in any location where a person cannot be observed from a public ground-level  
22 position.

23 507-J:3 Exceptions. RSA 507-J:2 shall not apply to:

24 I. Law enforcement officers:

25 (a) Operating pursuant to a valid warrant;

26 (b) Acting pursuant to exigent circumstances involving imminent danger to life or the  
27 risk of destruction of evidence;

28 (c) Countering a high risk of a terrorist attack by a specific individual or organization if  
29 the United States Secretary of Homeland Security determines that credible intelligence indicates  
30 that there is such a risk;

31 (d) Searching for specifically identified missing persons;

32 (e) Searching for specifically identified stolen vehicles; and

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1 (f) Investigating motor vehicle accidents.

2 (g) Performing other law enforcement duties.

3 II. Inspections by a fire department in accordance with their responsibilities outlined in RSA  
4 154:2, III.

5 III. Inspections of critical infrastructure as defined in RSA 319-D:1, II, or non-utility-owned  
6 electricity generators, by or on behalf of an owner or operator of a critical infrastructure facility for  
7 the sole purpose of monitoring, inspecting, or maintaining the facility.

8 IV. Property appraisal for taxes, provided that:

9 (a) Each property owner shall be notified that the surveillance prohibited by RSA 507-  
10 J:2 may occur and that the property owner may opt out of that surveillance without cost or other  
11 consequence;

12 (b) Any images of identifiable persons shall be blurred as soon as practicable; and

13 (c) All surveillance images shall be permanently destroyed when they are no longer  
14 needed for the purpose for which they were obtained.

15 V. Environmental emergency assessments authorized by the department of environmental  
16 services, provided that:

17 (a) Any images of identifiable persons shall be blurred as soon as practicable; and

18 (b) All surveillance images shall be permanently destroyed when they are no longer  
19 needed for the purpose for which they were obtained.

20 VI. An employee or contractor of an insurance company who uses a small unmanned aircraft  
21 system solely for the purposes of underwriting, claims investigation, claims adjustment, assessment  
22 of property damage or investigation of insurance fraud.

23 VII. Railroad owners and easement holders, for the purpose of monitoring, inspecting, or  
24 maintaining the railroad.

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26 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to  
27 read as 4:

28

29 2 New Subparagraphs; Unlawful Operation or Use of a Small Unmanned Aircraft System.  
30 Amend RSA 644:23, I by inserting after subparagraph (d) the following new subparagraphs:

31 (e) "Imaging device" means any technology capable of recording or transmitting images,  
32 sound, or data.

33 (f)(1) "Surveillance" means:

34 (A) With respect to an owner, tenant, occupant, invitee, or licensee of privately  
35 owned real property, the intentional observation of such persons with sufficient visual clarity to be  
36 able to obtain information about their identity, habits, conduct, movements, or whereabouts; and

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1                   (B) With respect to privately owned real property, the intentional observation of  
2 such property's physical improvements with sufficient visual clarity to be able to determine unique  
3 identifying features or its occupancy by one or more persons.

4                   (2) "Surveillance" does not include the capture of photographs, electronic images,  
5 and associated data by a drone operator that is operating for legitimate business purposes unrelated  
6 to surveillance in a manner consistent with applicable FAA rules, licenses, or exemptions.

7           3 New Paragraph; Unlawful Operation or Use of Small Unmanned Aircraft System. Amend  
8 RSA 644:23 by inserting after paragraph IV the following new paragraphs:

9           IV-a. A person is guilty of a class B felony if such person knowingly operates a small  
10 unmanned aircraft system that includes an imaging device to conduct surveillance over private  
11 property without written consent from the property owner, in any situation where a reasonable  
12 expectation of privacy exists, in violation of RSA 507-J:2, and without being subject to an exception  
13 listed in RSA 507-J:3.

14           IV-b. A person is guilty of a class B felony if such person knowingly distributes or publishes  
15 surveillance obtained in violation of paragraph IV-a.

16           IV-c. Paragraphs IV-a and IV-b shall not apply to any entity exempt under paragraph III.

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AMENDED ANALYSIS

This bill establishes a civil cause of action and a criminal penalty for the use of unmanned aerial systems for certain purposes that violate a reasonable expectation of privacy, subject to certain exceptions.