

Floor Amendment to SB 89

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to the relationship between a franchisor and a franchisee and relative to the
4 use of drones.
5

6 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
7 read as 3:
8

9 2 New Chapter; Drones. Amend RSA by inserting after chapter 422-C the following new
10 chapter:

11 CHAPTER 422-D

12 DRONES

13 422-D:1 Definitions. In this chapter:

14 I. "Airspace" means the space above the ground in New Hampshire.

15 II. "Automated surveillance" means surveillance employing a mechanical or electronic
16 device, computer or software, including but not limited to facial recognition technology, that
17 functions continuously without continuous input from a human operator.

18 III. "Commercial purpose" means to exchange for money, goods or services or to exchange
19 with the intention of directly or indirectly benefiting any business or other undertaking intended
20 for profit.

21 IV.(a) "Critical infrastructure" means a county, city, or town jail or detention facility, police
22 station or fire station; any prison, facility, or institution under the control of the department of
23 corrections; and any additional structure designated by the Federal Aviation Administration as
24 critical infrastructure.

25 (b) The department of transportation, bureau of aeronautics, shall apply to the Federal
26 Aviation Administration to request the structures specified in subparagraph (a) to be designated as
27 critical infrastructures.

28 V. "Drone" means a powered, aerial vehicle, excluding a geosynchronous satellite, that:

29 (a) Does not carry a human operator;

30 (b) Uses aerodynamic forces to provide vehicle lift;

31 (c) Can fly autonomously or be piloted remotely; and

32 (d) May be expendable or recoverable.

33 VI. "Government" means the federal government, the state government and any political

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1 subdivisions thereof, and state and municipal agencies and departments, including employees and
2 agents.

3 VII. "Image" means a record, including a photograph, of thermal, infrared, ultraviolet,
4 visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena
5 which captures conditions existing on or about real property or an individual located on that
6 property.

7 VIII. "Imaging device" means a mechanical, digital, or electronic viewing device; still
8 camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable
9 of recording, storing, or transmitting an image.

10 IX. "Individual" means a living human being.

11 X. "Information" means any evidence, images, sounds, or data gathered by a drone.

12 XI. "Law enforcement agency" means a lawfully established state, county, or municipal
13 agency that is responsible for the prevention and detection of crime, local government code
14 enforcement, and the enforcement of the criminal laws.

15 XII. "Law enforcement officer" means a duly sworn employee of a law enforcement agency
16 who is invested with the power of arrest or the detection of crime.

17 XIII. "Person" means individuals, partnerships, limited liability companies, corporations,
18 and any other organizations, including for-profit and not-for-profit entities, but excluding
19 government.

20 XIV. "Surveillance" means the willful act of tracking or following, while photographing,
21 taking images of, listening to, or making a recording of: (a) a recognizable individual or a group of
22 individuals, including their movements, activities or communications, or (b) motor vehicles
23 identifiable by their license plates. The term does not include such activities on real estate in which
24 a person has a legal interest.

25 422-D:2 Government Use of Drones Limited; Exceptions.

26 I. Except as provided in paragraph II or III:

27 (a) No government shall use a drone, or obtain, receive, use, or retain information
28 acquired by or through a drone, to engage in surveillance, to acquire evidence, or to enforce laws;
29 and

30 (b) No government shall use a drone equipped with an imaging device to record an
31 image of an identifiable individual on privately-owned real property in violation of such individual's
32 reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an
33 individual is presumed to have a reasonable expectation of privacy on privately-owned real property
34 if he or she (1) is within an enclosed structure or (2) is not observable by individuals located at
35 ground level in a public place where they have a legal right to be, regardless of whether he or she is
36 observable from the air.

37 II.(a) Notwithstanding the provisions of paragraph I, a government may use a drone, or

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1 obtain, receive, use or retain information acquired by or through a drone, for law enforcement
2 purposes under the following conditions only:

3 (1) If surveillance is undertaken, with the prior consent of the person who is the
4 subject of surveillance and the owner or lessee of the property which is the subject of the
5 surveillance.

6 (2) If a government first obtains a search warrant signed by a judge and based on
7 probable cause or the use of a drone is pursuant to a legally-recognized exception to the warrant
8 requirement. A search warrant authorizing the use of a drone shall specify the period for which
9 operation of the drone is authorized, which period shall not exceed 10 days unless subsequently
10 renewed by a judge.

11 (3) If a government possesses reasonable suspicion that, under particular
12 circumstances, swift action is needed to prevent imminent harm to life or serious damage to
13 property, or to forestall the imminent escape of a suspect, or the destruction of evidence, or to assist
14 in locating missing, abducted or lost individuals, hunters or hikers, or to rescue persons in natural
15 disasters, injured persons or persons in need of medical assistance.

16 (4) To counter a high risk of a terrorist attack or incident by a specific individual or
17 organization which the United States Department of Homeland Security determines that credible
18 intelligence indicates that there is such a risk.

19 (5) To increase situational awareness in understanding the nature, scale, and scope
20 of an incident which has occurred and for planning and coordinating an effective and legal
21 response, provided the incident is limited geographically and in time.

22 (6) To support the tactical deployment of law enforcement personnel and equipment
23 in emergency situations.

24 (7) To document a specific crime scene, traffic crash scene or other major incident
25 scene, such as a disaster caused by natural or human activity, provided such documentation is
26 conducted in a geographically confined and time-limited manner.

27 (8) For purposes of training law enforcement officers or others in the proper, safe,
28 and legal use of drones.

29 (b) A government which uses a drone, or obtains, receives, uses or retains information
30 acquired by or through a drone, pursuant to paragraph II may do so only if (1) specifically
31 authorized by the chief law enforcement officer of a law enforcement agency, or a supervisor
32 designated by the chief law enforcement officer, (2) is not operated in an unsafe manner, and (3) is
33 not operated in violation of United States Federal Aviation Administration regulations.

34 (c) The use of a drone by a government under subparagraphs II(a)(4) shall be limited to
35 a period of 48 hours of its initial use after which a search warrant or other court order signed by a
36 judge shall be required. The use of a drone by a government under subparagraphs II(a)(5)-(8) shall
37 be limited to a period of 48 hours of its initial use after which reauthorization shall be required.

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1 (d) Within 5 business days of the initiation of the use of a drone under subparagraph
2 II(a), the government shall report in writing the use of a drone to the attorney general who shall
3 annually post such reports on the department of justice website in a searchable format.

4 III. Notwithstanding the provisions of paragraph I, a government may use a drone, or
5 obtain, receive, use, or retain information acquired by or through a drone for non-law enforcement
6 purposes if, in an emergency, a government determines that, under particular circumstances, swift
7 action is needed to prevent imminent harm to life or serious damage to property, or to assist in
8 locating missing, abducted, or lost individuals, hunters, or hikers, or to rescue persons in natural
9 disasters, injured persons, or persons in need of medical assistance.

10 IV. Unless the fact of a violation is being disputed, information obtained by a government in
11 violation of paragraphs I and II shall, within 12 hours after the discovery of the violation, be
12 permanently and irretrievably destroyed, shall not be transferred to another government or person,
13 shall not be admissible in any judicial or administrative proceeding and shall not be used to
14 establish reasonable suspicion or probable cause to believe that an offense has been committed.

15 V. Images of identifiable individuals obtained by a government pursuant to paragraphs I or
16 II shall be blurred, deleted or otherwise de-identified as soon as practicable but in any case within
17 30 days after being obtained unless such images may be evidence in a criminal investigation.

18 VI. No government shall own, use, or exercise control over a drone that is equipped with
19 any kind of lethal or non-lethal weapon.

20 VII. A government that owns, uses, or exercises control over a drone that causes injury to a
21 person or a person's property shall be liable for such injury.

22 VIII. A government that owns, uses, or exercises control over one or more drones shall
23 annually on July 1 submit a written or electronic report to the attorney general containing
24 information on the number of such drones, the number of times each such drone was used during
25 the prior year and, in general terms, the purpose of each such use. The attorney general shall
26 annually post such reports on the department of justice website in a searchable format.

27 422-D:3 Non-Government Use of Drones Limited; Exceptions.

28 I. No person shall use a drone to engage in automated surveillance.

29 II. No person shall use a drone to engage in surveillance for commercial purposes without
30 the prior consent of each affected person and each owner or possessor of affecting buildings or
31 structures or parts thereof. It shall not be a defense to a charge of violating this chapter that the
32 buildings or structures were not marked with a no-trespassing sign or similar notice.

33 III.(a) No person shall use a drone equipped with an imaging device to record or view an
34 image or listen to or record the sound of an identifiable individual on privately-owned real property
35 in which the person does not have a legally recognized interest in violation of such individual's
36 reasonable expectation of privacy without his or her consent. For purposes of this subparagraph, an
37 individual is presumed to have a reasonable expectation of privacy on privately-owned real property

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1 if he or she:

2 (1) Is within an enclosed structure; or

3 (2) Is not observable by individuals located at ground level in a public place where
4 they have a legal right to be, regardless of whether he or she is observable from the air.

5 (b) This paragraph shall not apply to the unintentional recording or viewing of an
6 image, or to the unintentional listening to or recording the sound of, an individual.

7 IV. No person shall:

8 (a) Operate a drone over critical infrastructure without the written consent of the
9 owner of the critical infrastructure;

10 (b) Allow a drone to make contact with critical infrastructure facility, including any
11 individual or object on the premises of or within the critical infrastructure; or

12 (c) Allow a drone to come within a distance of a critical infrastructure facility that is
13 close enough to interfere with the operations of or cause a disturbance to the facility or its
14 occupants.

15 V. No person shall own, use, or exercise control over a drone that is equipped with any kind
16 of lethal or nonlethal weapon. This prohibition shall not apply to a person who is a federal
17 government military contractor using or exercising control over a drone which is equipped with a
18 nonlethal weapon and which is flying over real property in which the person has a legal interest.

19 VI. Any person that owns, uses, or exercises control over a drone in this state that causes
20 injury to a person or a person's property shall be liable for the injury.

21 VII. No person shall use a drone to harass or stalk another person.

22 VIII. Paragraphs I, II, and III of this section shall not apply to a person engaged in a
23 business or profession licensed by the state, or by an agent, employee, or contractor of such person,
24 if the drone is used solely to perform reasonable tasks within the scope of practice or activities
25 permitted under such person's license, and provided that the drone shall not be used to obtain
26 information about the identity, habits, conduct, movements, whereabouts, affiliations, associations,
27 transactions, reputation, or character of any individual.

28 422-D:4 Airport Prohibition. No government or person shall operate a drone within 5 miles of
29 any airport in this state in a manner that does not comply with relevant federal law and Federal
30 Aviation Administration regulations and guidelines in effect at the time.

31 422-D:5 Identification. Except for the drone's original equipment manufacturer, each owner of
32 a drone shall identify the drone with the owner's telephone number in permanent ink or other
33 indelible manner of identification. If space allows, the owner's name shall also be included.
34 Identification shall be readily accessible and legible upon close visual inspection.

35 422-D:6 Federal Preemption. If federal law preempts any provision of this chapter, that
36 provision shall not apply.

37 422-D:7 Applicability. The provisions of this chapter shall not apply to the New Hampshire

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1 national guard in the conduct of its official duties.

2 422-D:8 Construction. This chapter shall be construed to provide the greatest possible
3 protection of the privacy of the people of this state. Nothing in this chapter shall be construed to
4 impose liability in connection with news gathering activity.

5 422-D:9 Penalties.

6 I. A government employee or agent who knowingly violates RSA 422-D:2, except for the
7 reporting requirements in 422-D:2, II(c) and 422-D:2, VIII, shall be guilty of a misdemeanor. A
8 government employee or agent who violates the reporting requirements in RSA 422-D:2, II(c) or
9 422-D:2, VIII shall be guilty of a violation for a first offense and a misdemeanor for any subsequent
10 offense.

11 II. A government which violates RSA 422-D:2 may be subject to a civil penalty of up to
12 \$10,000 which shall be deposited in the general fund of the state.

13 III. A person who suffers damages or injury caused by a government's use of a drone
14 pursuant to this chapter may bring a civil action to recover actual damages which shall be limited to
15 medical expenses, treatment, and rehabilitation, property damage, permanent physical impairment,
16 court costs, and reasonable attorney's fees from the government. No claim for pain and suffering,
17 emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship,
18 services, or consortium, or other nonpecuniary losses shall be compensable under this chapter. This
19 paragraph shall not be construed as a waiver of the sovereign immunity of the state.

20 IV. A person who violates RSA 422-D:3, I-VII shall be guilty of a misdemeanor.

21 V. Any person who suffers injury caused by a drone operated in violation of this chapter
22 shall be entitled to damages from the person who committed the violation of not less than \$1,000
23 and an award of reasonable attorney fees.

24 VI. In addition to any other remedies allowed by law, a person who willfully gains
25 unauthorized control over a drone shall be liable to the owner of the drone in an amount of not less
26 than \$1,000 and an award of reasonable attorney fees.

27
28 Amend the bill by replacing section 3 with the following:

29
30 3 Effective Date.

31 I. Section 2 of this act shall take effect July 1, 2018.

32 II. The remainder of this act shall take effect upon its passage.

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2017-2136h

AMENDED ANALYSIS

This bill:

- I. Clarifies when a franchisor is an employer of a franchisee.
- II. Regulates the use of drones by government agencies and individuals and establishes criminal penalties and civil remedies for violations.