

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 291

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 20, 2016.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §29-2B-1, §29-2B-2, §29-2B-3, §29-2B-4, §29-2B-5, §29-2B-6 and §29-2B-7,
3 all relating to regulation of unmanned aircraft systems; requiring compliance with federal
4 laws and regulations relating to such vehicles; defining terms; creating criminal offenses
5 for certain conduct using an unmanned aircraft system and setting penalties therefor;
6 regulating law-enforcement use of unmanned aircraft systems; limiting uses by law
7 enforcement of unmanned aircraft systems; requiring search warrants to be obtained
8 before unmanned aircraft systems may be used in criminal investigations and creating
9 exemptions thereto; requiring documentation of law-enforcement flights of unmanned
10 aircraft systems and maintenance of records; precluding admissibility in civil, criminal and
11 administrative proceedings of images or the evidence obtained in violation of the
12 provisions of this article; and requiring the West Virginia Aeronautics Commission, the
13 West Virginia Department of Military Affairs and Public Safety, the West Virginia Sheriffs'
14 Bureau for Professional Standards and the West Virginia State Police to propose
15 legislative rules and promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §29-2B-1, §29-2B-2, §29-2B-3, §29-2B-4, §29-2B-5, §29-2B-6 and §29-2B-7,
3 all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2B. USE OF UNMANNED AIRCRAFT SYSTEMS.

§29-2B-1. Definitions.

1 As used in this article:

2 (1) "Aircraft" means any contrivance now known or subsequently invented, used or
3 designed for navigation or for flight in the air, including, but not limited to, unmanned aircraft

4 vehicles or systems;

5 (2) "Chief executive officer" has the same meaning as the definition for "chief executive"
6 in section one, article twenty-nine, chapter thirty of this code;

7 (3) "Commission" means the West Virginia State Aeronautics Commission;

8 (4) "Director" means the Director of Aeronautics for the State of West Virginia or his or her
9 designee;

10 (5) "Law-enforcement agency" means any duly authorized state, county or municipal
11 organization employing one or more persons whose responsibility is the enforcement of laws of
12 the state, the United States, county or municipality: *Provided*, That neither the Public Service
13 Commission nor any state institution of higher education nor any resort area district is a law-
14 enforcement agency;

15 (6) "Targeted facility" means a coal mine, coal preparation plant, petroleum and aluminum
16 refineries, chemical and rubber manufacturing facilities, electric generation facilities and public
17 utilities and any entity regulated by the Public Service Commission;

18 (7) "Unmanned aircraft system" or "system" means an aircraft that is operated without
19 direct human intervention from inside or on the aircraft and includes the crewmember, the
20 associated support equipment, the control station, data links, telemetry, communications and
21 navigation equipment necessary to operate the unmanned aircraft;

22 (8) "Unmanned aircraft system crew member" or "crew member" means a person other
23 than an unmanned aircraft system pilot who is assigned to duties related to an unmanned aircraft
24 system during flight; and

25 (9) "Unmanned aircraft system pilot" or "pilot" means a person exercising control over an
26 unmanned aircraft system during flight.

§29-2B-2. Applicability of federal laws and Federal Aviation Administration regulations.

1 Notwithstanding any provision of this article to the contrary, any person or entity operating
2 an unmanned aircraft system shall only do so in compliance with applicable federal law and

3 applicable regulations of the Federal Aviation Administration.

§29-2B-3. Prohibited use of an unmanned aircraft system; criminal penalties.

1 (a) Except as authorized by the provisions of this article, a person may not operate an
2 unmanned aircraft system:

3 (1) To take photographs or other types of images of another person without the other
4 person's permission where the person being photographed or whose image is being captured has
5 a reasonable expectation of privacy; or

6 (2) To physically harass another person or surveille another person without the express
7 permission of the person surveilled.

8 (b) Any person violating the provisions of subsection (a) of this section is guilty of a
9 misdemeanor and, upon conviction, shall be confined in jail for not more than one year, fined not
10 less than \$100 nor more than \$1000, or both confined and fined.

11 (c) Any person who operates an unmanned aircraft system under the influence of alcohol,
12 controlled substances or drugs shall be guilty of a misdemeanor and, upon conviction, shall be
13 confined in jail for not less than twenty-four hours nor more than one year, fined not less than
14 \$100 or more than \$5,000, or both confined and fined.

15 (d) Any person who equips an unmanned aircraft system with any lethal weapon,
16 operates any unmanned aircraft system equipped with any lethal weapon, or operates an
17 unmanned aircraft system with the intent to cause damage to or disrupt in any way the flight of a
18 manned aircraft is guilty of a felony and, upon conviction, shall be imprisoned for not less than
19 one nor more than five years, fined not less than \$1,000 nor more than \$5,000, or both imprisoned
20 and fined.

§29-2B-4. Law-enforcement use of unmanned aircraft systems.

1 (a) A law-enforcement agency employing unmanned aircraft shall:

2 (1) Obtain any authorization, permit or certificate required by the Federal Aviation
3 Administration to operate the unmanned aircraft system;

4 (2) Allow the unmanned aircraft system to be operated only by unmanned aircraft system
5 pilots and unmanned aircraft systems crew members who have been trained and certified in the
6 operation of the unmanned aircraft system and only under the supervision of officials trained in
7 the policies, laws, rules and procedures governing the use of the unmanned aircraft system;

8 (3) Ensure that the flight of an unmanned aircraft system be approved by the Director of
9 the Commission or his or her designee or the chief executive officer of the law-enforcement
10 agency or the officer's designee;

11 (4) Operate the unmanned aircraft system for a lawful public purpose;

12 (5) Maintain a record of each flight, including the time, date and purpose of the flight, and
13 the identity of the authorizing official;

14 (6) Establish an auditable flight record system, including the documentation of any change
15 in a flight time record;

16 (7) Establish a method for notifying the public that an unmanned aircraft system is in
17 operation, unless notifying the public would endanger the safety of any person or jeopardize the
18 efficacy of a criminal investigation; and

19 (8) Provide for community involvement in the development of the policies required in this
20 section, including the consideration of public comment.

21 (b) Absent a warrant, except for an emergency response for public safety purposes or
22 search and rescue purposes, no law-enforcement agency shall use an unmanned aircraft system
23 to intentionally conduct surveillance of, gather evidence or collect information about, or
24 photographically or electronically record specifically targeted persons or specifically targeted
25 private property including, but not limited to, an individual or a dwelling owned by an individual
26 and such dwelling's curtilage, without such individual's written consent;

27 (c) Any law-enforcement agency operating an unmanned aircraft system for criminal
28 investigative purposes shall document such use, including flight durations, flight path, flight
29 objectives and authorization for the flight. The person with supervisory authority over the flight

30 shall verify that the documentation is accurate and complete. The law-enforcement agency shall
31 retain all documentation required by this subsection for five years; the law-enforcement agency
32 shall not retain any imagery or other data obtained during a flight which does not contain evidence
33 of a crime or is otherwise reasonably related to an agency criminal investigation for more than
34 ninety days.

35 (d) No law-enforcement agency may use an unmanned aircraft system for purposes of
36 traffic enforcement.

37 (e) Nothing in this section shall be construed to prohibit the use by a law-enforcement
38 agency of an unmanned aircraft system under circumstances when there is reasonable cause to
39 believe that the use and operation of an unmanned aircraft system would safely avert imminent
40 threats to human life and safety, property damage or environmental damage.

§29-2B-5. Unauthorized operation of an unmanned aircraft system over certain industrial facilities; penalties.

1 (a) The operation of an unmanned aircraft system over the property of a targeted facility
2 to intentionally deploy any substance, material, projectile or object, or to conduct surveillance of,
3 gather evidence and information about, or photographically or electronically record a targeted
4 facility without the prior consent of the owner of the targeted facility is unlawful: *Provided, That*
5 nothing in this section prohibits a person from operating an unmanned aircraft system to conduct
6 surveillance of, gather evidence and information about, or photographically or electronically
7 record the person's own property or immovable property owned by another person under a valid
8 lease, servitude, right-of-way, right of use, permit, license or other right: *Provided, however, That*
9 nothing in this section prohibits third persons retained by the owner of immovable property from
10 operating an unmanned aircraft system over, or to otherwise conduct surveillance of, gather
11 evidence and information about, or photographically or electronically record the property:
12 *Provided further, That* nothing in this section prohibits a person from operating an unmanned
13 aircraft system in connection with production of a motion picture, television program or similar

14 production if the operation is authorized by the property owner. The provisions of this subsection
15 do not apply to a law enforcement agency acting in compliance with the provisions of this article.

16 (b) Any person who violates subsection (a) of this section is guilty of a misdemeanor and,
17 upon conviction, shall be fined not more than \$500, or confined in a state correctional facility for
18 not more than six months, or both.

19 (c) Upon conviction for a second or subsequent offense, any person who violates
20 subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not
21 less than \$500 nor more than \$1,000, or confined in a state correctional facility for not less than
22 six months nor more than one year, or both.

§29-2B-6. Rulemaking.

1 The commission, the West Virginia Department of Military Affairs and Public Safety, the
2 West Virginia Sheriffs' Bureau for Professional Standards and the West Virginia State Police shall
3 jointly propose legislative rules for promulgation in accordance with article three, chapter twenty-
4 nine-a of this code. They may promulgate any necessary emergency rules to implement the
5 provisions of this article pursuant to the provisions of section fifteen, article three, chapter twenty-
6 nine-a of this code.

§29-2B-7. Admissibility of images or evidence obtained in violation of the provisions of
this article.

1 Evidence obtained in violation of the provisions of this article is not admissible in any civil,
2 criminal or administrative proceeding.