

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 291

BY SENATOR TRUMP

[Introduced January 14, 2016; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §62-1H-1, §62-1H-2, §62-1H-3, §62-1H-4, §62-1H-5, §62-1H-6, §62-1H-7,
 3 §62-1H-8 and §62-1H-9, all relating to law enforcement use of unmanned aircraft systems;
 4 providing operational requirements for unmanned aircraft systems; providing for the use
 5 and documentation by a law-enforcement agency; providing for retention of images;
 6 making exceptions; providing for admissibility of evidence; providing for evidence obtained
 7 in violation of this section; and defining terms.

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 §62-1H-1, §62-1H-2, §62-1H-3, §62-1H-4, §62-1H-5, §62-1H-6, §62-1H-7,
 3 §62-1H-8 and §62-1H-9, all to read as follows:

ARTICLE 1H. LAW ENFORCEMENT USE OF UNMANNED AIRCRAFT SYSTEMS

§62-1H-1. Use of unmanned aircraft systems.

1 Except as provided in this article, a law-enforcement agency may not use an unmanned
 2 aircraft system in this state.

§62-1H-2. Operational requirements for unmanned aircraft systems.

1 (a) A law-enforcement agency shall adopt procedures for the use of unmanned aircraft
 2 systems. The procedures adopted under this section must require, at a minimum, that the law-
 3 enforcement agency:

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

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

10 (3) Provide that the flight of an unmanned aircraft system be approved by the Secretary

11 of Military Affairs and Public Safety or the chief executive officer of the law-enforcement agency
12 or the officer's designee;

13 (4) Ensure that the flight of an unmanned aircraft system be for a public purpose;

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

16 (6) Establish an auditable flight record system, including the documentation of a change
17 in a flight time record;

18 (7) Establish a method for notifying the public of the operation of an unmanned aircraft
19 system, unless notifying the public would endanger the safety of a person;

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

22 (b) In this section, "chief executive officer" has the same meaning as "chief executive" in
23 section one, article twenty-nine, chapter thirty of this code.

§62-1H-3. Use of an unmanned aircraft system by a law-enforcement agency.

1 A law-enforcement agency may use an unmanned aircraft system:

2 (1) To gather evidence in a criminal investigation:

3 (A) Under the express terms of a search warrant issued by a court; or

4 (B) In accordance with a judicially recognized exception to the warrant requirement; or

5 (2) In situations and for uses not involving a criminal investigation and not intended to lead
6 to the production of evidence for use in a criminal investigation, if the use does not constitute an
7 invasion of personal privacy and is consistent with the procedures in section two of this article.

§62-1H-4. Documentation of unmanned aerial vehicle use.

1 (a) The person authorized to conduct the surveillance under this article shall document all
2 use of an unmanned aerial vehicle for surveillance. The person shall document all surveillance
3 flights as to duration, flight path, and mission objectives.

4 (b) The flight information must be verified as accurate and complete by the supervising

5 person authorized by a court to conduct the surveillance.

6 (c) The flight information required under this section must be retained for five years.

7 (d) Any imaging or any other forms of data lawfully obtained under this article which are
8 not accompanied by a reasonable and articulable suspicion that the images or data contain
9 evidence of a crime, or are relevant to an ongoing investigation or trial, may not be retained for
10 more than ninety days.

11 (e) Except for the operational capabilities of the unmanned aerial vehicle system and other
12 operational information strictly related to the technical conduct and physical security of the
13 surveillance operation, evidence acquired in accordance with this article is discoverable through
14 subpoena and discovery proceedings otherwise available in criminal proceedings.

§62-1H-5. Retention of images.

1 (a) A law-enforcement agency may not retain images captured by an unmanned aircraft
2 system unless retention of the image is required:

3 (1) As part of an investigation or prosecution;

4 (2) For training purposes; or

5 (3) By federal or state law or by municipal ordinance.

6 (b) Images that may not be retained under subsection (a) of this section are confidential
7 and are not available as public records as defined in chapter twenty-nine-b of this code.

§62-1H-6. Definitions.

1 For the purposes of this article,

2 "Law-enforcement agency" means any duly authorized state, county or municipal
3 organization employing one or more persons whose responsibility is to maintain public peace and
4 order, prevent and detect crime, make arrests and the enforcement of laws of the state or any
5 county or municipality thereof. However, neither the Public Service Commission nor any state
6 institution of higher education nor any resort area district is a law-enforcement agency.

7 "Unmanned aircraft system" means an unmanned aircraft that is operated without direct

8 human intervention from inside or on the aircraft and includes crewmember, the associated
9 support equipment, control station, data links, telemetry, communications, and navigation
10 equipment necessary to operate the unmanned aircraft;

11 "Unmanned aircraft system crew member" means a person other than an unmanned
12 aircraft system pilot who is assigned to duties related to an unmanned aircraft system during flight;

13 "Unmanned aircraft system pilot" means a person exercising control over an unmanned
14 aircraft system during flight.

§62-1H-7. Exceptions.

1 This article does not prohibit any use of an unmanned aerial vehicle for surveillance during
2 the course of:

3 (1) *Exigent circumstances.* -- The use of an unmanned aerial vehicle by a law-
4 enforcement agency is permitted when exigent circumstances exist. For the purposes of this
5 subdivision, exigent circumstances exist when a law-enforcement agency possesses reasonable
6 suspicion that absent swift preventative action, there is an imminent danger to life or bodily harm.

7 (2) *An environmental or weather-related catastrophe.* -- The use of an unmanned aerial
8 vehicle by state or local authorities to preserve public safety, protect property, survey
9 environmental damage to determine if a state of emergency should be declared, or conduct
10 surveillance for the assessment and evaluation of environmental or weather-related damage,
11 erosion, flood, or contamination.

§62-1H-8. Prohibited use.

1 (a) A law-enforcement agency may not authorize the use of, including granting a permit to
2 use, an unmanned aerial vehicle armed with any lethal or nonlethal weapons.

3 (b) This article prohibits any use of an unmanned aerial vehicle for: domestic use in private
4 surveillance. A law-enforcement agency may not authorize the use of, including granting a permit
5 to use, an unmanned aerial vehicle to permit any private person to conduct surveillance on any
6 other private person without the express, informed consent of that other person or the owner of

7 any real property on which that other private person is present.

§62-1H-9. Admissibility.

1 Evidence obtained under this article is admissible in any court in this state: *Provided*, That
2 the evidence is not admissible solely because it was obtained by illegal use of an unmanned
3 aircraft: *Provided, however*, That evidence which is obtained in violation of this section is not
4 admissible in a civil, criminal or administrative proceeding and may not be used in an affidavit of
5 probable cause in an effort to obtain a search warrant.

NOTE: The purpose of this bill is to provide for law enforcement use of unmanned aircraft systems. The bill provides operational requirements for unmanned aircraft systems. The bill provides for the use and documentation by a law-enforcement agency. The bill provides for retention of images. The bill makes exceptions. The bill provides for admissibility of evidence. The bill provides for evidence obtained in violation of this section. The bill defines terms.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.