

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 560

BY SENATORS CARMICHAEL, ASHLEY, FERNS, PALUMBO,
PLYMALE, PREZIOSO, TRUMP, WALTERS, WOELFEL, BLAIR
AND STOLLINGS

[Introduced February 10, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §15-5-3 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §29-2A-1 and §29-2A-3 of said code; to amend said code by adding thereto
 3 a new section, designated §29-2A-15; and to amend and reenact §29-2A-20 of said code,
 4 all relating to operation of an unmanned aircraft system; providing exceptions; providing
 5 criminal penalties of fine and imprisonment for such unlawful operation of an unmanned
 6 aircraft system; providing for joint rule-making and enforcement authority by the Division
 7 of Homeland Security and Emergency Management and the state Aeronautics
 8 Commission over such unlawful operation of an unmanned aircraft system relating to
 9 prohibiting the use of unmanned aircraft; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

1 That §15-5-3 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §29-2A-1 and §29-2A-3 of said code be amended and reenacted; that said code
 3 be amended by adding thereto a new section, designated §29-2A-15; and that §29-2A-20 of said
 4 code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-3. Division of Homeland Security and Emergency Management created.

1 (a) The Office of Emergency Services is continued as the Division of Homeland Security
 2 and Emergency Management within the Department of Military Affairs and Public Safety. All of
 3 the allied, advisory, affiliated or related entities and funds associated with the Office of Emergency
 4 Services and all its functions, personnel and property, are transferred to, incorporated in and
 5 administered as a part of the Division of Homeland Security and Emergency Management.
 6 Wherever the words "Office of Emergency Services" appear in this code, they shall mean the
 7 Division of Homeland Security and Emergency Management.

8 (b) A Director of the Division of Homeland Security and Emergency Management shall be
9 appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall
10 consider applicants for Director who at a minimum: (1) Have at least five years managerial or
11 strategic planning experience; (2) are knowledgeable in matters relating to public safety,
12 homeland security, emergency management and emergency response; and (3) have at a
13 minimum, a federally issued secret level security clearance or have submitted to or will submit to
14 a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued
15 secret level security clearance.

16 (c) The director may employ such technical, clerical, stenographic and other personnel,
17 fix their compensation and make expenditures within the appropriation to the division or from other
18 funds made available for the purpose of providing homeland security and emergency
19 management services to carry out the purpose of this article. Employees of the Division of
20 Homeland Security and Emergency Management shall be members of the state Civil Service
21 System and all appointments of the office, except those required by law to be exempt, shall be a
22 part of the classified service under the Civil Service System.

23 (d) The director and other personnel of the Division of Homeland Security and Emergency
24 Management shall be provided with appropriate office space, furniture, equipment, supplies,
25 stationery and printing in the same manner as provided for personnel of other state agencies.

26 (e) The director, subject to the direction and control of the Governor through the Secretary
27 of the Department of Military Affairs and Public Safety, shall be executive head of the Division of
28 Homeland Security and Emergency Management and shall be responsible to the Governor and
29 the Secretary of the Department of Military Affairs and Public Safety for carrying out the program
30 for homeland security and emergency management in this state. The director in consultation with
31 the Secretary of the Department of Military Affairs and Public Safety shall coordinate the activities
32 of all organizations for homeland security and emergency management within the state and
33 maintain liaison with and cooperate with homeland security, emergency management and other

34 emergency service and civil defense agencies and organizations of other states and of the federal
35 government, and shall have additional authority, duties and responsibilities authorized by this
36 article as may be prescribed by the Governor or the Secretary of the Department of Military Affairs
37 and Public Safety.

38 (f) The director shall have the power to acquire in the name of the state by purchase, lease
39 or gift, real property and rights or easements necessary or convenient to construct thereon the
40 necessary building or buildings for housing and homeland security and emergency management
41 control center.

42 (g) The director has joint rule-making and enforcement authority with the state Aeronautics
43 Commission as provided in sections three and twenty, article two-a, chapter twenty-nine of this
44 code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-1. Definitions.

1 As used in the statutes of West Virginia, unless the context otherwise requires:

2 ~~(a)~~ "Aeronautics" means the art and science of flight, including, but not limited to,
3 transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft
4 power plants and accessories, including the repair, packing and maintenance of parachutes; and
5 the design, establishment, construction, extension, operation, improvement, repair or
6 maintenance of airports or other air navigation facilities.

7 ~~(b)~~ "Aircraft" means any contrivance now known, or hereafter invented, used or designed
8 for navigation of or flight in the air.

9 ~~(c)~~ "Airmen" means any individual who engages, as the person in command, or as pilot,
10 mechanic or member of the crew, in the navigation of the aircraft while under way and any
11 individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft

12 engines, propellers or appliances and any individual who serves in the capacity of aircraft
13 dispatcher or air-traffic control-tower operator. It does not include any individual employed outside
14 the United States, or any individual employed by a manufacturer of aircraft, aircraft engines,
15 propellers or appliances to perform duties as inspector or mechanic in connection therewith, or
16 any individual performing inspection or mechanical duties in connection with aircraft owned or
17 operated by him or her.

18 ~~(d)~~ "Air navigation" or "navigation" means the operation or navigation of aircraft in the air
19 space over this state, or upon any airport within this state.

20 ~~(e)~~ "Air navigation facility" means any facility other than one owned or controlled by the
21 federal government used in, available for use in, or designed for use in aid of air navigation,
22 including airports, and any structures, mechanisms, lights, beacons, markers, communications
23 system or other instrumentalities or devices used or useful as an aid or constituting an advantage
24 or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient
25 operation or maintenance of an airport, and any combination of any or all of such facilities.

26 ~~(f)~~ "Airport" means any area of land or water which is used, or intended for use, for the
27 landing and take off of aircraft and any appurtenant areas which are used, or intended for use, for
28 airport buildings or other airport facilities or rights-of-way, together with all airport buildings and
29 facilities located thereon.

30 ~~(g)~~ "Airport hazard" means any structure, object of natural growth or use of land which
31 obstructs the air space required for the flight of aircraft in landing or taking off at any airport or is
32 otherwise hazardous to such landing or taking off.

33 ~~(h)~~ "Commission" means the West Virginia state Aeronautics Commission.

34 ~~(i)~~ "Director" means the director of aeronautics of this state.

35 "Federal government" means the United States of America and any department, agency,
36 or instrumentality thereof.

37 ~~(j)~~ "Municipality" means any county, city, town, village or other political subdivision of this

38 state. "Municipal" means pertaining to a municipality as herein defined.

39 ~~(k)~~ "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of
40 aircraft in the airspace over this state or upon the ground within this state.

41 ~~(l)~~ "Person" means any individual, firm, copartnership, corporation, company, association,
42 joint stock association or body politic and includes any trustee, receiver, assignee or other similar
43 representative thereof.

44 "State government" means the State of West Virginia and any political subdivision,
45 department, agency, or instrumentality thereof.

46 "Targeted facility" means the following systems:

47 (1) Petroleum and alumina refineries.

48 (2) Chemical and rubber manufacturing facilities.

49 (3) Electric generation facilities.

50 (4) Public utilities or any entity regulated by the West Virginia Public Service Commission.

51 "Unmanned aircraft system" means an unmanned, powered aircraft that does not carry a
52 human operator, can be autonomous or remotely piloted or operated, and can be expendable or
53 recoverable. "Unmanned aircraft system" does not include any of the following:

54 (1) A satellite orbiting the earth.

55 (2) An unmanned aircraft system used by the federal government or a person who is acting
56 pursuant to contract with the federal government to conduct surveillance of specific activities.

57 (3) An unmanned aircraft system used by the state government or a person who is acting
58 pursuant to a contract with the state government to conduct surveillance of specific activities.

59 (4) An unmanned aircraft system used by a local government law-enforcement agency or
60 fire department.

61 ~~(m)~~ The singular of any of the above defined terms shall include the plural and plural the
62 singular.

§29-2A-3. Powers and duties of commission.

1 The commission shall assume, carry on and succeed to all the duties, rights, powers,
2 obligations and liabilities heretofore belonging to, exercised by, or assumed by the state board of
3 aeronautics, pursuant to statutory authority heretofore existing and as changed or modified by the
4 provisions of this article. It may enter into any contracts necessary to the execution of the powers
5 granted to it by this article. It is empowered and directed to encourage, foster and assist in the
6 development of aeronautics in this state and to encourage the establishment of airports and air
7 navigation facilities. It shall cooperate with and assist the federal government, the municipalities
8 of this state and other persons in the development of aeronautics and shall act to coordinate the
9 aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate
10 with the commission in the development of aeronautics and aeronautics facilities in this state. The
11 commission is hereby given the power and authority to make such rules as it may deem necessary
12 and advisable for the public safety, governing the designing, laying out, locating, building,
13 equipping and operating of all airports and the conduct of all other phases of aeronautics. The
14 commission and the West Virginia Division of Homeland Security and Emergency Management
15 shall promulgate joint rules, including emergency rules, pursuant to chapter twenty-nine of this
16 code as necessary to implement section fifteen of this article.

17 The commission shall keep on file with the Secretary of State, and at the principal office
18 of the commission, a copy of all its rules and orders having general effect for public inspection. It
19 shall provide for the publication and general distribution of all its orders, rules and procedures
20 having general effect. Copies of any such orders or rules shall be delivered to any person
21 interested, free of charge, upon request. The publication and distribution of any such order or rule
22 as provided herein shall be sufficient notice to the public of the provisions, requirements and effect
23 thereof.

24 Each rule of the commission shall be promulgated as a legislative rule pursuant to the
25 provisions of chapter twenty-nine-a of this code.

26 Except where otherwise prohibited, the commission is authorized to permit the state Board

27 of Investments to invest, as provided by this code, any funds received by the commission pursuant
28 to the provisions of this code.

§29-2A-15. Unlawful operation of an unmanned aircraft system; penalties.

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

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

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

22 (d) This section may be preempted by applicable federal law or by regulations adopted by
23 the Federal Aviation Administration.

§29-2A-20. Enforcement of aeronautics laws.

1 It shall be the duty of the commission, its members, the director, officers and such
2 employees of the commission as may be designated by it, and every state and municipal officer
3 charged with the enforcement of state and municipal laws, to enforce and assist in the
4 enforcement of this article and of all rules and orders issued pursuant thereto and of all other laws
5 of this state relating to aeronautics; and in that connection each of the aforesaid persons is
6 authorized to inspect and examine at reasonable hours any aircraft, the credentials of any airman
7 or other person engaged in aeronautics required by the laws of this state or of the United States
8 to have in his or her possession credentials evidencing his or her authority or permission to
9 engage in aeronautics, any premises and the buildings and other structures thereon, where
10 airports, air navigation facilities or other aeronautical activities are operated or conducted:
11 Provided, That the commission has joint enforcement authority with the West Virginia Division of
12 Homeland Security and Emergency Management in enforcing section fifteen of this article.

13 The commission is authorized in the name of the state to enforce the provisions of this
14 article and the rules and orders issued pursuant thereto by injunction or other legal process in the
15 courts of this state.

NOTE: The purpose of this bill is to permit the operation of an unmanned aircraft system. The bill provides exceptions. The bill provides criminal penalties of fine and imprisonment for the unlawful operation of an unmanned aircraft system. The bill provides for joint rulemaking and enforcement authority by the Division of Homeland Security and Emergency Management and the state Aeronautics Commission over such unlawful operation of an unmanned aircraft system relating to prohibiting the use of unmanned aircraft.

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