

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2653**

**2015 Carryover**

(BY DELEGATES FRICH, BUTLER, J. NELSON, CADLE,  
COOPER, AMBLER, R. SMITH, HILL AND OVERINGTON)

[Introduced January 13, 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 §1-7-1, §1-7-2, §1-7-3, §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all relating to  
 3 prohibiting the use of unmanned aircraft; providing exceptions; requiring documentation  
 4 when an unmanned aircraft is used; providing remedies; prohibiting the use of certain  
 5 evidence and preservation of collected data; establishing exceptions; 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  
 2 new article, designated §1-7-1, §1-7-2, §1-7-3, §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all to read as  
 3 follows:

**ARTICLE 7. UNMANNED AIRCRAFT SYSTEM.**

**§1-7-1. Definitions.**

1 For purposes of this article, the following definitions apply:

2 "Law-enforcement agency" means a person authorized by law, or funded by the state, to  
 3 investigate or prosecute offenses against the state.

4 "Unmanned aircraft" means any aircraft that is operated without the possibility of direct  
 5 human intervention within or on the aircraft.

6 "Unmanned aircraft system" means an unmanned aircraft and associated elements,  
 7 including communication links and the components that control the unmanned aircraft, which are  
 8 required for the pilot in command to operate safely and efficiently in state airspace.

**§1-7-2. Prohibited use of unmanned aircraft system.**

1 (a) Except as otherwise provided in this article, a law- enforcement agency may not use  
 2 an unmanned aircraft for surveillance of a person within the state or for the surveillance of  
 3 personal or business property located within the borders of the state to gather evidence or other  
 4 information pertaining to criminal conduct, or conduct in violation of a statute or regulation except

5 to the extent authorized in a warrant issued by a court which satisfies the requirements of the  
6 Constitution of West Virginia.

7 (b) Warrants to conduct surveillance with an unmanned aircraft may only be issued in a  
8 criminal investigation.

**§1-7-3. Exceptions.**

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

5 (b) The use of an unmanned aircraft by state authorities is permitted to preserve public  
6 safety, protect property, survey environmental damage to determine if a state of emergency  
7 should be declared, or to conduct surveillance for the assessment and evaluation of  
8 environmental or weather-related damage, erosion, flood or contamination.

**§1-7-4. Prohibited surveillance.**

1 (a) A state agency may not authorize the use, including grant a permit to use, of an  
2 unmanned aircraft while armed with any lethal or nonlethal weapons, including firearms, pepper  
3 spray, bean bag guns, mace, and sound-based weapons.

4 (b) A state agency may not authorize the use, including granting a permit to use, of an  
5 unmanned aircraft to permit any private person to conduct surveillance on any other private  
6 person.

7 (c) A state agency may not authorize the use, including granting a permit to use, of an  
8 unmanned aircraft for the purpose of the surveillance of persons engaged in the lawful exercise  
9 of the constitutional right of freedom of speech and freedom of assembly.

**§1-7-5. Remedies.**

1        An aggrieved party may file a civil action and seek all appropriate relief to prevent or  
2 remedy a violation of this article.

**§1-7-6. Use of evidence prohibited; data may not be preserved; exceptions.**

1        (a) Evidence obtained or collected in violation of this article is not admissible as evidence  
2 in a criminal prosecution, including use during trial, at sentencing, before a grand jury, as rebuttal  
3 evidence, or during administrative hearings in any court of law in the state.

4        (b) Any imaging or other forms of observational data gathered by unmanned aircraft  
5 surveillance from or concerning the parties or places subjected to surveillance in violation of this  
6 article may not be preserved by law-enforcement or government agencies for any purpose unless  
7 required by a court of law.

8        (c) Any imaging or any other forms of data lawfully obtained under this article for which  
9 there is not a reasonable and articulable suspicion that those images or data contain evidence of  
10 a crime, or are relevant to an ongoing investigation or trial, may not be retained for more than  
11 ninety days, unless the retention is attendant to general agency guidelines regarding the retention  
12 of evidence in criminal cases. In those cases, the imaging or other data may not be distributed  
13 to agencies, entities, or individuals if the distribution is not necessary to meet general agency  
14 guidelines regarding the retention of evidence in criminal cases.

15        (d) An unmanned aircraft may not conduct any type of surveillance that would violate state  
16 laws regarding the interception of aural communications, electronic messaging, personal location  
17 data, or acquire video or still images of a person within a home or place without first obtaining all  
18 required warrants in compliance with state statutes relevant to the interception of such voice  
19 communications, digital communications, physical surveillance data, or to capture the still or video  
20 images of a person or interior or a place for which a search warrant is prerequisite to its lawful  
21 search.

**§1-7-7. Documentation of unmanned aircraft surveillance.**

1       (a) The person or agency authorized to conduct the surveillance under this article shall  
2 document all use of unmanned aircraft for surveillance. The person shall document all  
3 surveillance flights as to duration, flight path, and mission objectives, including the names of place  
4 or persons authorized to be subject to surveillance.

5       (b) The flight information must be certified as accurate and complete by the supervising  
6 person authorized by a court to conduct the surveillance.

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

8       (d) Except for the operational capabilities of the unmanned aircraft system and other  
9 operational information strictly related to the technical conduct and physical security of the  
10 surveillance operation, a person accused of a crime that includes evidence gathered through the  
11 use of unmanned aircraft system surveillance may obtain all information relating to the person  
12 acquired in the course of the surveillance through subpoena and discovery proceedings available  
13 in criminal proceedings.

14       (e) The documentation required by this section applies to all uses of unmanned aircraft  
15 systems, including testing, training, education and research.

NOTE: The purpose of this bill is to prohibit the use of unmanned aircraft. The bill provides exceptions and requires documentation when an unmanned aircraft is used. The bill provides remedies. The bill prohibits the use of certain evidence and the preservation of data, and establishes exceptions. The bill defines terms.

This article is new; therefore, it has been completely underscored.