

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 9

BY SENATORS TRUMP AND JEFFRIES

[Originating in the Committee on Judiciary; reported

on February 22, 2017]

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, §29-2B-7 and
3 §29-2B-8, all relating to regulation of unmanned aircraft systems; requiring compliance
4 with federal laws and regulations relating to such systems; defining terms; creating
5 criminal offenses for certain conduct using an unmanned aircraft system and setting
6 penalties therefor; regulating law-enforcement use of unmanned aircraft systems; limiting
7 uses by law enforcement of unmanned aircraft systems; requiring search warrants to be
8 obtained before unmanned aircraft systems may be used in criminal investigations and
9 creating exemptions thereto; requiring documentation of law-enforcement flights of
10 unmanned aircraft systems and maintenance of records; exempting images obtained
11 pursuant to law-enforcement action from application of the Freedom of Information Act;
12 precluding admissibility in civil, criminal and administrative proceedings of images or the
13 evidence obtained in violation of the provisions of this article; requiring the West Virginia
14 Aeronautics Commission in consultation with the Secretary of the West Virginia
15 Department of Military Affairs and Public Safety, the West Virginia State Police and the
16 Law-Enforcement Professional Standards Subcommittee of the Governor's Committee on
17 Crime, Delinquency and Correction to propose legislative rules and authorizing the
18 promulgation of emergency rules; and specifically directing and authorizing the proposal
19 and promulgation of certain 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, §29-2B-7 and
3 §29-2B-8 all, to read as follows:

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) "Designated industrial facility" means a coal mine, coal preparation plant, natural gas
9 processing, fractionation, stabilization and compressor station facilities, petroleum and aluminum
10 refineries, industrial manufacturing facilities, chemical manufacturing facilities, electric generation
11 facilities and public utilities, and any entity regulated by the Public Service Commission;

12 (5) "Director" means the Director of Aeronautics for the State of West Virginia or his or
13 her designee;

14 (6) "Law-enforcement agency" means any duly authorized state, county or municipal
15 organization employing one or more persons whose responsibility is the enforcement of laws of
16 the state, United States, county or municipality. However, neither the Public Service Commission,
17 nor any state institution of higher education, nor any resort area district is a law-enforcement
18 agency;

19 (7) "News gathering" means the act of obtaining facts or information by a person engaged
20 in the business of broadcasting or otherwise publishing information about current events to the
21 general public;

22 (8) "Unmanned aircraft system" or "system" means an aircraft that is operated without
23 direct human intervention from inside or on the aircraft and includes the crew member, the
24 associated support equipment, the control station, data links, telemetry, communications and
25 navigation equipment necessary to operate the unmanned aircraft;

26 (9) "Unmanned aircraft system crew member" or "crew member" means a person other
27 than an unmanned aircraft system pilot who is assigned to duties related to an unmanned aircraft

28 system during flight; and

29 (10) “Unmanned aircraft system pilot” or “pilot” means a person exercising control over an
30 unmanned aircraft system during flight.

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

1 (a) Notwithstanding any provision of this article to the contrary, any person or entity
2 operating an unmanned aircraft system may do so only in compliance with applicable federal law
3 and applicable regulations of the Federal Aviation Administration.

4 (b) Except as provided in section three of this article, the provisions of this article are
5 inapplicable to a person or business entity lawfully doing business in this state and operating an
6 unmanned aircraft system for lawful commercial purposes in compliance with:

7 (1) A license issued by the Federal Aviation Administration;

8 (2) All applicable rules promulgated by the Federal Aviation Administration; and

9 (3) Any waiver or exemption granted by the Federal Aviation Administration to the person
10 or business entity.

§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 intentionally take photographs or other types of images or publish such photographs
4 or images of another person without the other person’s permission where the person being
5 photographed or whose image is being captured has a reasonable expectation of privacy;

6 (2) To physically harass another person or surveille another person without the express
7 permission of the person surveilled unless the surveillance is for a lawful commercial or law-
8 enforcement purpose;

9 (3) To intentionally operate an unmanned aircraft system so as to interfere with the
10 provision of law enforcement or emergency services; or

11 (4) Except as exempted by regulations of the Federal Aviation Administration and other

12 provisions of this article, to operate an unmanned aircraft system within one hundred feet of a
13 dwelling or structure without the consent of the owner or occupant thereof: *Provided*, That the
14 provisions of this subdivision do not apply to a person operating an unmanned aircraft system in
15 the airspace above the person's real property, real property upon which the person has the
16 consent of the owner to operate the unmanned aircraft system or public property.

17 (b) Any person violating subsection (a) of this section is guilty of a misdemeanor and, upon
18 conviction thereof, shall be confined in jail for not more than one year, fined not less than \$100
19 nor more than \$1,000, or both confined and fined.

20 (c) Any person who operates an unmanned aircraft system under the influence of alcohol,
21 controlled substances or drugs is guilty of a misdemeanor and, upon conviction thereof, shall be
22 confined in jail for not less than twenty-four hours nor more than one year, fined not less than
23 \$100 nor more than \$5,000, or both confined and fined.

24 (d) Any person who equips an unmanned aircraft system with any lethal weapon, operates
25 any unmanned aircraft system equipped with any lethal weapon or operates an unmanned aircraft
26 system with the intent to damage, cause harm to or disrupt flight of a manned aircraft, or the flight
27 thereof, is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than
28 one nor more than five years, fined not less than \$1,000 nor more than \$5,000, or both imprisoned
29 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 system 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 agency
10 or the officer's designee;

11 (4) Operate the unmanned aircraft system for a legitimate law-enforcement purpose;

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

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

16 (7) Establish a method for notifying the public that an agency utilizes unmanned aircraft
17 systems; and

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

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

26 (c) The person with supervisory authority over a flight shall verify that the documentation
27 is accurate and complete. The law-enforcement agency shall retain all documentation required
28 by this section for a period of five years. The law-enforcement agency shall not retain any imagery
29 or other data obtained during a flight which does not contain evidence of a crime or is otherwise
30 reasonably related to an agency criminal investigation for purposes other than training for more
31 than ninety days: *Provided*, That images retained and maintained pursuant to this section are not
32 subject to the state's Freedom of Information Act.

33 (d) No law-enforcement agency may use an unmanned aircraft system for purposes of

34 enforcement of traffic laws or ordinances.

35 (e) Cause and origin investigation of fire incidents constitutes a law-enforcement purpose
36 under this section.

37 (f) Nothing in this section may 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 could avert or mitigate
40 imminent threats to human life and safety, property damage or environmental damage.

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

1 (a) The operation of an unmanned aircraft system over the property of a designated
2 industrial facility to intentionally deploy any substance, material, projectile or object, or to conduct
3 surveillance of, gather evidence and information about, or photographically or electronically
4 record a designated industrial facility without the prior consent of the owner of the designated
5 industrial facility is unlawful: *Provided*, That nothing in this section prohibits a person from
6 operating an unmanned aircraft system to conduct surveillance of, gather evidence and
7 information about, or photographically or electronically record the person's own property or
8 immovable property owned by another person under a valid lease, servitude, right of use, permit,
9 license or other right: *Provided, however*, That nothing in this section prohibits third persons
10 retained or authorized by the owner of immovable property from operating an unmanned aircraft
11 system over, or to otherwise conduct surveillance of, gather evidence and information about, or
12 photographically or electronically record the property: *Provided further*, That nothing in this section
13 prohibits a person from operating an unmanned aircraft system in connection with production of
14 a motion picture, television program or similar production if the operation is authorized by the
15 property owner. This subsection does not apply to a law-enforcement, public safety or emergency
16 management agency acting in compliance with the other provisions of this article.

17 (b) Any person who violates subsection (a) of this section is guilty of a misdemeanor and,

18 upon conviction thereof, shall be fined not more than \$500, or confined in a state correctional
19 facility for not more than six months, or both fined and confined.

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

§29-2B-6. Rulemaking.

1 The commission, upon consultation with the Secretary of Military Affairs and Public Safety,
2 the West Virginia State Police, the West Virginia Sheriffs' Bureau for Professional Standards and
3 the Law-Enforcement Professional Standards Subcommittee of the Governor's Committee on
4 Crime, Delinquency and Correction, shall propose legislative rules for promulgation in accordance
5 with article three, chapter twenty-nine-a of this code to implement the purposes of this article. The
6 commission shall promulgate any necessary emergency rules to implement the provisions of this
7 article pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this
8 code. Any rule proposed or promulgated pursuant to the provisions of this section shall include
9 provisions wherein the commission will establish a protocol for news gathering over designated
10 industrial facilities which preserves the first amendment right to freedom of the press. The
11 commission may propose or promulgate a rule or rules designating the airspace above particular
12 designated industrial facilities as areas over which unmanned aircraft systems may not be
13 operated due to public safety considerations.

§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.

§29-2B-8. Exemptions from applicability of this article.

1 (a) Nothing in this article may be construed to prohibit the operation of an unmanned

2 aircraft system over the property of another for purposes of traveling from one location to another:
3 Provided, That images captured during such flights are not subject to publication to the general
4 public.

5 (b) Nothing in this article may be construed to prohibit the use of a camera or optical
6 navigation device on an unmanned aircraft system solely for the purposes of navigation where no
7 image is captured.

8 (c) Nothing in this article may be construed to prohibit the operation of an unmanned
9 aircraft system by agents or employees of a state agency for legitimate public safety, regulatory
10 or compliance assurance purposes if the operation thereof is in compliance with section two of
11 this article.

12 (d) Nothing in this article may be construed to prohibit or regulate the operation of an
13 unmanned aircraft system in compliance with federal law and Federal Aviation Administration
14 regulations for purposes of fire emergency response.

15 (e) Nothing in this article may be construed to prohibit the operation of an unmanned
16 aircraft system by a person holding a valid commercial license for purposes of newsgathering if
17 the operation of the unmanned aircraft system is in compliance with all applicable rules and
18 requirements of the Federal Communications Commission and the Federal Aviation
19 Administration and the operation of the unmanned aircraft system does not violate the provisions
20 of section three of this article.