

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2384

FISCAL
NOTE

BY DELEGATES CAPUTO

[INTRODUCED FEBRUARY 13, 2017; REFERRED
TO THE COMMITTEE ON THE JUDICIARY.]

1 A BILL to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended, relating
2 to the use of drone surveillance of private citizens; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That §61-8-28 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-28. Criminal invasion of privacy; penalties.

1 (a) For the purposes of this section, the words or terms defined in this subsection have
2 the meanings ascribed to them. These definitions are applicable unless a different meaning
3 clearly appears from the context:

4 (1) "A person fully or partially nude" means a male or female who is either clothed or
5 unclothed so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B)
6 in the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque
7 covering;

8 (2) "To visually portray" a person means to create a reproducible image of that person by
9 means of:

10 (A) A photograph;

11 (B) A motion picture;

12 (C) A video tape;

13 (D) A digital recording; or

14 (E) Any other mechanical or electronic recording process or device that can preserve, for
15 later viewing, a visual image of a person; and

16 (3) "Place where a reasonable person would have an expectation of privacy" means a
17 place where a reasonable person would believe that he or she could, in privacy, be fully or partially
18 nude without expecting that the act of exposing his or her body was being visually portrayed by
19 another person.

20 (b) It is unlawful for a person to knowingly visually portray another person without that
21 other person's knowledge, while that other person is fully or partially nude and is in a place where
22 a reasonable person would have an expectation of privacy. A person who violates the provisions
23 of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a ~~county~~
24 ~~or regional~~ jail for not more than one year or fined not more than \$5,000, or both confined and
25 fined.

26 (c) Any person who displays or distributes visual images of another person with knowledge
27 that ~~said~~ the visual images were obtained in violation of subsection (b) of this section is guilty of
28 a misdemeanor and, upon conviction, shall be confined in a ~~county or regional~~ jail for not more
29 than one year or fined not more than \$5,000, or both confined and fined.

30 (d) It is unlawful for any person to use a drone or unmanned aircraft system to enter and
31 view another person's property in which the person operating the drone has no lawful access or
32 right of entry, with the intent of viewing or capturing photographs, video, or surveillance, of persons
33 or activities on another person's property. A person who violates the provisions of this subsection
34 is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one
35 year or fined not more than \$5,000, or both confined and fined.

36 ~~(d)~~ (e) A person who is convicted of a second or subsequent violation of subsection (b),
37 ~~or (c)~~ or (d) of this section is guilty of a felony and, upon conviction, shall be confined in a state
38 correctional facility for not less than one year nor more than five years or fined not more than
39 \$10,000, or both confined and fined.

NOTE: The purpose of this bill is to create restrictions on the use of drones or unmanned aircraft systems on another person's property in order to view or capture pictures, video, or surveillance for the use of the person operating the drone and establish penalties for violating those restrictions.

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