

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3284

FISCAL  
NOTE

By Delegates Fehrenbacher, Espinosa, Zatezalo,  
Hillenbrand, Mallow, Adkins, Westfall, Anderson and  
Riley

[Introduced February 03, 2023; 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 §29-2C-1, §29-2C-2, §29-2C-3, §29-2C-4, §29-2C-5, and §29-2C-6, all  
3 relating to regulation of unmanned aircraft systems; requiring compliance with federal laws  
4 and regulations relating to such vehicles; defining terms; creating criminal offenses for  
5 certain conduct using an unmanned aircraft system and setting penalties therefor;  
6 precluding admissibility in civil, criminal and administrative proceedings of images or the  
7 evidence obtained in violation of the provisions of this article; and requiring the West  
8 Virginia Aeronautics Commission, the West Virginia Department of Military Affairs and  
9 Public Safety, the West Virginia Sheriffs' Bureau for Professional Standards and the West  
10 Virginia State Police to propose legislative rules and promulgate emergency rules.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 2C. USE OF UNMANNED AIRCRAFT SYSTEMS.**

### **§29-2C-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) "Director" means the Director of Aeronautics for the State of West Virginia or his or her  
6 designee;

7 (3) "Law-enforcement agency" means any duly authorized state, county or municipal  
8 organization employing one or more persons whose responsibility is the enforcement of laws of  
9 the state, the United States, county or municipality: *Provided*, That neither the Public Service  
10 Commission nor any state institution of higher education nor any resort area district is a law-  
11 enforcement agency;

12 (4) "Targeted facility" means a coal mine, coal preparation plant, petroleum and aluminum  
13 refineries, manufacturing facilities, electric generation facilities and public utilities and any entity

14 regulated by the Public Service Commission;

15 (5) "Unmanned aircraft system" or "system" means an aircraft that is operated without  
16 direct human intervention from inside or on the aircraft and includes the crewmember, the  
17 associated support equipment, the control station, data links, telemetry, communications and  
18 navigation equipment necessary to operate the unmanned aircraft;

19 (6) "Unmanned aircraft system crew member" or "crew member" means a person other  
20 than an unmanned aircraft system pilot who is assigned to duties related to an unmanned aircraft  
21 system during flight; and

22 (7) "Unmanned aircraft system pilot" or "pilot" means a person exercising control over an  
23 unmanned aircraft system during flight.

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

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

**§29-2C-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 take photographs or other types of images of another person without the other  
4 person's permission where the person being photographed or whose image is being captured has  
5 a reasonable expectation of privacy; or

6 (2) To physically harass another person or surveille another person without the express  
7 permission of the person surveilled.

8 (b) Any person violating the provisions of subsection (a) of this section is guilty of a  
9 misdemeanor and, upon conviction, shall be confined in jail for not more than one year, fined not  
10 less than \$100 nor more than \$1000, or both confined and fined.

11 (c) Any person who operates an unmanned aircraft system under the influence of alcohol,

12 controlled substances or drugs shall be guilty of a misdemeanor and, upon conviction, shall be  
13 confined in jail for not less than 24 hours nor more than one year, fined not less than \$100 or more  
14 than \$5,000, or both confined and fined.

**§29-2C-4. Unauthorized operation of an unmanned aircraft system over certain industrial facilities; penalties.**

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

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

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

22 months nor more than one year, or both.

**§29-2C-5. Rulemaking.**

1 The commission, the West Virginia Department of Military Affairs and Public Safety, the  
 2 West Virginia Sheriffs' Bureau for Professional Standards and the West Virginia State Police shall  
 3 jointly propose legislative rules for promulgation in accordance with §29A-3-1 et seq. of this code.  
 4 They may promulgate any necessary emergency rules to implement the provisions of this article  
 5 pursuant to §29-3-15 of this code.

**§29-2C-6. 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.

NOTE: The purpose of this bill is to regulate unmanned aircraft systems. It requires compliance with federal laws and regulations relating to such vehicles; defines terms; creates criminal offenses for certain conduct using an unmanned aircraft system and sets penalties therefor; prohibits admissibility in civil, criminal and administrative proceedings of images or the evidence obtained in violation of the provisions of this article; and requires the West Virginia Aeronautics Commission, the West Virginia Department of Military Affairs and Public Safety, the West Virginia Sheriffs' Bureau for Professional Standards and the West Virginia State Police to propose legislative rules and promulgate emergency rules.

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