

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3479

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

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-16-1 and §61-16-2 of the Code of West Virginia, 1931, as
2 amended, all relating to unmanned aircraft; adding definitions; requiring compliance with
3 all federal laws and regulations relating to such vehicles; and creating criminal offenses
4 and penalties for certain conduct using an unmanned aircraft system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. USE OF UNMANNED AIRCRAFT SYSTEMS.

§61-16-1. Definitions.

1 As used in this article:

2 (1) "Aircraft" means any device now known or subsequently invented, used, or designed
3 for flight in the air, including, but not limited to, unmanned aircraft vehicles or systems;

4 (2) "Targeted facility" means a critical infrastructure facility, as defined in §61-10-34 of this
5 Code.

6 (3) "Unmanned aircraft system" or "system" means an aircraft that is operated without
7 direct human intervention from inside or on the aircraft and includes the crewmember, the
8 associated support equipment, the control station, data links, telemetry, communications, and
9 navigation equipment necessary to operate the unmanned aircraft, including, but not limited to,
10 drones;

11 ~~(3)~~ (4) "Unmanned aircraft system operator" or "operator" means a person exercising
12 control over an unmanned aircraft system during flight.

§61-16-2. 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 knowingly and intentionally capture or take photographs, images, video, or audio of
4 another person or the private property of another, without the other person's permission, in a
5 manner that would invade the individual's reasonable expectation of privacy, including, but not
6 limited to, capturing, or recording through a window;

7 (2) To knowingly and intentionally view, follow, or contact another person or the private
8 property of another without the other person's permission in a manner that would invade the
9 individual's reasonable expectation of privacy, including, but not limited to, viewing, following, or
10 contacting through a window;

11 (3) To knowingly and intentionally harass another person;

12 (4) To violate a restraining order or similar judicial order;

13 (5) To act with a willful wanton disregard for the safety of persons or property; or

14 (6) To knowingly and intentionally operate an unmanned aircraft system in a manner that
15 interferes with the official duties of law enforcement personnel or emergency medical personnel.

16 (b) (1) The operation of an unmanned aircraft system over the property of a targeted facility
17 to

18 (A) intentionally deploy any substance, material, projectile or object,

19 (B) to conduct surveillance of, or gather evidence and information about such facility, with
20 the intent to do harm to such facility the public or any person, or

21 (C) to engage in any attempt to obtain

22 (i) business trade secrets, proprietary information, or,

23 (ii) protected Federal or state information, for their own use or profit, is unlawful: *Provided,*

24 That nothing in this section prohibits a person from operating an unmanned aircraft system to

25 conduct surveillance of, gather evidence and information about, or photographically or

26 electronically record the person's own property or immovable property owned by another person

27 under a valid lease, servitude, right-of-way, right of use, permit, license, or other right: *Provided,*

28 *however,* That nothing in this section prohibits third persons retained by the owner of immovable

29 property from operating an unmanned aircraft system over, or to otherwise conduct surveillance

30 of, gather evidence and information about, or to photographically or electronically record the

31 property: *Provided further,* That nothing in this section prohibits a person from operating an

32 unmanned aircraft system in connection with production of a motion picture, television program or
33 similar production if the operation is authorized by the property owner.

34 (2) The provisions of this subsection do not apply to a law-enforcement agency acting in
35 compliance with the provisions of this article.

36 (3) The provisions of this subsection do not apply to an accredited and licensed news
37 organization using a camera-carrying drone at altitudes greater than 400 feet over private property
38 for legitimate news purposes.

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

42 ~~(e)~~(d) Any person who equips an unmanned aircraft system with any deadly weapon or
43 operates any unmanned aircraft system equipped with any deadly weapon, other than for military
44 in an official capacity, is guilty of a felony and, upon conviction thereof, shall be fined not less than
45 \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one nor
46 more than five years, or both fined and imprisoned.

47 ~~(d)~~(e) Any person who operates an unmanned aircraft system with the intent to cause
48 damage to or disrupt in any way the flight of a manned aircraft is guilty of a felony and, upon
49 conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 imprisoned for not
50 less than one nor more than five years, or both fined and imprisoned.

51 ~~(e)~~(f) A person that is authorized by the Federal Aviation Administration to operate
52 unmanned aircraft systems for commercial purposes may operate an unmanned aircraft system in
53 this state for such purposes if the unmanned aircraft system is operated in a manner consistent
54 with federal law.

NOTE: The purpose of this bill is relating to unmanned aircraft; to add definitions; to require compliance with all federal laws and regulations relating to such vehicles; and create criminal offenses and penalties for certain conduct using an unmanned aircraft system.

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