

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

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 AERIAL VEHICLE.

§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~~ aerial
4 vehicles;

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

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

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

§61-16-2. Prohibited use of an unmanned aircraft ~~system~~ aerial vehicle; criminal penalties.

1 (a) Except as authorized by the provisions of this article, a person may not operate an
2 unmanned ~~aircraft system~~ aerial vehicle:

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~~ aerial vehicle in a
15 manner that interferes with the official duties of law enforcement personnel or emergency medical
16 personnel.

17 (b) (1) The operation of an unmanned aerial vehicle over the property of a targeted facility
18 to

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

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

22 (C) to engage in any attempt to obtain

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

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

25 That nothing in this section prohibits a person from operating an unmanned aerial vehicle to

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

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

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

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

30 property from operating an unmanned aerial vehicle over, or to otherwise conduct surveillance of,

31 gather evidence and information about, or to photographically or electronically record the property:
32 Provided further, That nothing in this section prohibits a person from operating an unmanned aerial
33 vehicle in connection with production of a motion picture, television program or similar production if
34 the operation is authorized by the property owner.

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

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

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

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

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

52 (e)(f) A person that is authorized by the Federal Aviation Administration to operate
53 unmanned aircraft-systems aerial vehicles for commercial purposes may operate an unmanned
54 aircraft system aerial vehicle in this state for such purposes if the unmanned aircraft system aerial
55 vehicle is operated in a manner consistent 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.